SENATE—*Wednesday, June 12, 1991*

(Legislative day of Tuesday, June 11, 1991)

The Senate met at 9:48 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN D. ROCKEFELLER IV, a Senator from the State of West Virginia.

The PRESIDING OFFICER. The prayer will be offered by Rabbi Shmuel M. Butman, director of Lubavitch Youth Organization.

PRAYER

Rabbi Shmuel M. Butman, director, Lubavitch Youth Organization, Brooklyn, NY, offered the following prayer:

Let us pray:

Dear G-d, with Your bountiful mercy we have just celebrated the 50th anniversary of the arrival to these shores of the revered leader of world Jewry, Rabbi Menachem M. Schneerson, the Lubavitcher Rebbe, Shlita.

In these 50 years, the Rebbe has, with Your divine help, enriched the educational, religious, moral, and ethical lives of millions of people—of all walks of life—throughout the world, and has made this world a better place to live in.

The Rebbe has called this year—5751 in the Jewish calendar, "The Year of Revealed Miracles."

The Rebbe, who was recently honored by this Senate on his 89th birthday, made this classification more than a year ago. And it is indeed happening now.

As the year has unfolded, we have seen hundreds of thousands of Jews from the Soviet Union arrive in Israel to start a new life. We were also witness to a crisis in the Middle East of international proportions and gravest implications.

We thank You, dear G-d, for the miraculously low casualties among the allied forces led by the United States of America, and thank You, dear G-d, that our troops have returned home—and are returning home—safely.

The Rebbe says that the reason we saw so many miracles this year, and are constantly seeing miracles in our daily lives, is due to the fact that You, Almighty G-d, are preparing the world for the miracle of miracles, the final redemption.

We ask you, dear G-d, to give us the strength to accelerate that process and the inspiration to do an extra good deed each day. In this spirit, dear G-d, I would like to take this opportunity to put a dollar bill, on which the words "In G-d We Trust" are imprinted, into this pushke—charity box.

This charity box reminds us all that we have an obligation not only to ourselves and our families, but, also, indeed, to our neighbors and to society in general.

Help us, dear G-d, to bring this message of charity and of the final redemption to all the people in these great United States, and around the world.

Almighty G-d, in Your infinite wisdom, You have established the Members of the Senate as the custodians of honesty and decency, justice, and peace for all peoples in the United States and, through the United States as the moral super power, for all the people of this planet.

We pray, dear G-d, that You continue to bestow Your bounty upon all of the Members of this body. May they merit, dear G-d, to have a "Year of Revealed Miracles" in their communal, national, and international endeavors, as well as in their private lives.

And let us all say: Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 12, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN D. ROCKEFELLER IV, a Senator from the State of West Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. ROCKEFELLER thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there now will be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

THE GUEST CHAPLAIN

Mr. MOYNIHAN. Mr. President, the opening prayer this morning was delivered by Rabbi Shmuel M. Butman of Brooklyn, NY—the director of the Lubavitch Youth Organization.

Most of the Members of the Senate are familiar with the dynamic work of the Lubavitch movement, which has branches in over 40 States and 100 nations. This extraordinary network of religious, educational, and cultural undertakings is led by an exceptional spiritual leader, Rabbi Menachem Mendel Schneerson, the seventh rabbi of Lubavitch. It is most appropriate that Rabbi Schneerson this week celebrates the 50th anniversary of his arrival in this country.

Rabbi Schneerson recently entered his 90th year. I know I speak for the entire Senate when I ask Rabbi Butman to convey to him our hearty best wishes for many years of continued inspired leadership.

I have met with Rabbi Schneerson on several occasions. New Yorkers of all faiths are proud that the world headquarters of Lubavitch is located in the Crown Heights section of Brooklyn where it was relocated in 1940 by the current Rebbe's venerable predecessor and father-in-law, Rabbi Joseph Schneerson.

Many Members of the Senate are familiar with the role that a member of this body played in securing the release of Rabbi Joseph Schneerson from a Soviet prison and the emigration of his entire immediate family, including the current Rebbe, from Stalin's Russia. The intervention of Senator William Borah of Idaho on behalf of this beleaguered Chassidic family stands as a noble example of courageous moral leadership. All of us in public life would do well to ponder Senator Borah's oft-repeated explanation as to his motive in leading an international campaign to save an apparently obscure religious leader in a faraway land, "I like to do things that get me votes in that final election we will all have to stand for someday."

I thought of Senator Borah last year when I visited Morocco in my capacity as chairman of the Senate Foreign Relations Committee's Subcommittee on the Middle East and South Asia.

When I met with the Jewish leaders of Morocco and toured several of their synagogues and civic centers I discovered two pictures in every building—His Majesty King Hassan II and the Lubavitcher Rebbe, Rabbi Menachem Mendel Schneerson.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

This should not surprise anyone who is familiar with the Rebbe's historic role in supporting Jewish education and Jewish continuity throughout the world.

Lubavitch is deeply involved in many nations around the globe where it is the only official Jewish presence and the only source of Jewish educational and religious training. And some day, hopefully soon, the full story will be told of Lubavitch's heroic role in keeping Judaism alive in lands of cruel tyranny where teaching the Bible is a crime and uttering a public prayer is rewarded with a prison sentence.

For 40 years these remarkable activities—the publicized and the clandestine; the Chanukah lamp lighting on television and the underground matzah baking under the noses of Communist secret police, the young women giving out Sabbath candles on Fifth Avenue, and the Yeshiva schools in Arab lands—have been directed and inspired by Rabbi Menachem Mendel Schneerson.

I would like to welcome his talented disciple Rabbi Shmuel Butman to the Senate and thank him for his moving words of prayer.

The ACTING PRESIDENT pro tempore. The Chair, in his capacity as the junior Senator from the State of West Virginia, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COHEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, before beginning, I want to indicate to my colleagues and see if there is any objection to my proceeding for a full 5 minutes.

We had General Schwarzkopf testifying before the Senate Armed Services Committee, and I was necessarily delayed from coming here. I have spoken with Senator REID, who is scheduled to begin debate on the highway bill at 10 o'clock, and he has indicated he would have no objection to my proceeding past the 10 o'clock hour.

I ask unanimous consent that I be allowed to speak for a full 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

BUILDING A CONSENSUS FOR DEPLOYING STRATEGIC DEFENSES

Mr. COHEN. Mr. President, in his State of the Union Address, President Bush announced a reorientation of the SDI Program toward defenses against limited ballistic missile attacks against the United States, allies, and U.S. forces overseas. In response to the President's decision, SDIO proposed a new defense concept it calls GPALS, or global protection against limited strikes. I hesitate to call GPALS a new concept, since it really is just a scaled-back version of the same program SDIO was pursuing before the President's decision, merely reducing the number of interceptors intended to be initially deployed.

Because of this fact, the debate on SDI over the past few months has focused on what I consider to be a secondary question regarding the role of space-based interceptors. For those who question SDIO's new GPALS proposal, the central issue has become SDIO's vigorous support for the spaced-based Brilliant Pebbles interceptors, which they view as an excuse for abrogating the ABM Treaty. As a result, Members who are inclined to support the deployment of some type of limited strategic defense system find themselves forced to oppose the President on SDI.

Similarly, many ardent SDI advocates, including some within SDIO, seem to argue that the Brilliant Pebbles Program is the sine qua non of a defense against strategic, or even tactical, ballistic missiles. One almost gets the impression that some SDI advocates would oppose deployment of a strategic defense system if it did not include Brilliant Pebbles.

Mr. President, I think the path this debate has taken clearly distorts the choices we face. While the question of Brilliant Pebbles is not unimportant, it has assumed an inappropriate centrality. Moreover, it has created a fissure between Members of Congress who otherwise might find that they are in essential agreement on the real question of whether or not we should proceed with a limited defensive system to protect against threats we are likely to face early in the next decade.

In the wake of the gulf war, support in Congress has grown for proceeding with both theater missiles defenses and defenses against accidental or unauthorized Soviet attacks and limited attacks from other countries that might acquire long-range missiles. Indeed, it appears that a consensus could be found for developing and deploying such defensive systems.

But there is no consenus for abandoning the ABM Treaty, which would not only undermine prospects for a START Treaty but create pressures to maintain, if not increase, levels of strategic offensive arms. The irony is that precisely at the point when it might be possible to solidify support for deploying limited strategic defenses and more effective tactical missile defenses, the divisive debate over Brilliant Pebbles is undermining the creation of this consensus.

A recent editorial Aviation Week & Space Technology hit the nail on the head:

> Even the biggest fans of strategic defense are beginning to see that SDI's pursuit of a system that is politically, if not technically, infeasible hurts the cause. The Pentagon should do itself a favor and try to restore some credibility to anti-ballistic missile defense research. Quit pushing for near-term deployment of Brilliant Pebbles. Take an evolutionary approach to advancing ballistic missile defenses. Build on Patriot, from the ground up.

What would such an evolutionary approach look like, if it were to win sustainable support from a majority of Members of Congress?

First, it would certainly include vigorous efforts to develop and deploy theater missile defenses, more capable than Patriot, to defend our forward deployed forces and our allies. The current development programs—including Patriot upgrades, ERINT, Arrow, and THAAD—will provide a range of deployment options to meet our theater missile defense needs.

As we increase the capabilities of such antitactical ballistic missiles [ATBM's], we will need to address questions related to the ABM Treaty. Treaty compliance questions arise when ATBM's begin to have the capability to counter SLBM's, particularly shorter range SLBM's, which are the easiest to counter. As a practical matter, the likely Soviet decision to phase out its shorter range SLBM's—the SS-N-6 and SS-N-17—should provide us with needed flexibility in developing more capable successors to the Patriot.

Second, we should vigorously pursue ground-based interceptor programs to provide a two-layered defense of the continental United States. The ABM Treaty originally allowed two ABM sites, each with 100 fixed, land-based interceptors; the 1974 protocol reduced this to one site with 100 interceptors. While a very limited system could be deployed within the bounds of the ABM Treaty as amended in 1974, the capability of a limited protection system could be significantly enhanced if multiple sites and more than 100 interceptors were permitted. Congress has recognized this and last year directed SDIO to examine limited protection systems incorporating modest changes to the numerical limitations in the ABM Treaty.

Such a multiple-site limited protection system could preserve the stabilizing benefits of the ABM Treaty while permitting the United States to protect itself against accidental or unauthorized Soviet launches and against limited attacks from nations now seeking to acquire long-range ballistic missiles.

In addition, we should pursue enhanced space-based sensors to support both theater and strategic missile defense systems. This, too, would require clarification of and quite possibly modest changes to the ABM Treaty. The treaty forbids satellites that could substitute for ABM radars, but applying

this prohibition in the real world presents difficult questions. Moreover, giving space-based sensors some of the battle management characteristics associated with ABM radars may be both desirable and possible without undermining the ABM Treaty.

We should also continue a robust technology development program to ensure that our deployed systems can be upgraded to meet new and responsive threats and to explore advanced concepts and breakthrough technologies. As part of this effort, it should be possible to continue deliberate development of Brilliant Pebbles—with tests conducted in a pop-up mode from fixed, land-based launchers at agreed ABM test ranges—to determine the potential benefits such a system might provide.

Finally, since each of these elements requires some clarification of or modification to the ABM Treaty, we should promptly proceed to engage the Soviet Union in serious discussions about these issues. Our efforts should be directed toward the negotiation of a protocol defining new limits on limited protection and theater defense systems consistent with the above-stated objectives; with the stabilizing benefits of the ABM Treaty's prohibition on comprehensive nationwide defense; and with START's deep cuts in offensive forces.

As with all complex arms control negotiations with the Soviets, it would be unwise to rush to negotiate and sign such an agreement. However, it is reasonable to seek such an agreement within the next few years. This would be consistent with the schedule of ongoing development programs. Moreover, it would be consistent with the desire to pursue a START II Treaty in the latter part of the decade, since further cuts in offensive forces are difficult to imagine in the absence of progress between Washington and Moscow on the issue of strategic defenses.

While some in the administration are reluctant to talk about renegotiating the ABM Treaty to permit multiple sites, this position lacks credibility given that their present policies envision withdrawal from the treaty.

In my view, Mr. President, an approach such as that I have outlined could form the basis for a sustainable, bipartisan consensus to develop and deploy ballistic missile defenses. Senator WARNER has played a leading role in the last few months both to ensure that this issue is fully debated and to craft a compromise, consensus position. I am also pleased to note that Members on the other side of the aisle, have also contributed to this effort at consensus. Indeed, the elements of the approach I have outlined builds on the ideas and proposals offered by a number of Members, which is why I believe it represents a basis for agreement.

In a floor statement last week, Senator WARNER noted that the task before us is to take the steps now that, consistent with technology and arms control, will lead to strategic and tactical missile defenses in the next decade, when proliferation will have reached frightening proportions.

I urge my colleagues on both sides of the aisle to join in the effort to lay this foundation for the future, putting aside the divisive and secondary issue of spaced-based interceptors and focusing instead on the elements on which most of us can agree.

Mr. President, I ask unanimous consent that the paper prepared by Senator WARNER and myself be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE FUTURE OF BALLISTIC MISSILE DEFENSES AND THE ABM TREATY: A BASIS FOR CONSENSUS, MAY 23, 1991

(By Senator John Warner and Senator William S. Cohen)

INTRODUCTION

Operation Desert Storm provided the United States with a number of lessons that have profound implications for military affairs and national security planning for years to come. One of the most important lessons of Operation Desert Storm is that we cannot rely upon the ability to locate and destroy missiles before they are launched and that a threat of retaliation may not deter missile attack. Defenses against such attacks are necessary to save lives as well as to prevent disruption of military operations. Some type of ballistic missile defense is needed now. We, the authors of this paper, believe there is a potential for bipartisan consensus in Congress to forge a program that will provide the United States and its forces overseas, as well as our allies and friends, with a capability to defend against ballistic missile attacks.

This paper presents a comprehensive plan which is the absolute minimum capability acceptable to the authors but a plan which, we believe, can be supported on a bipartisan basis. The plan provides for a two-part strategy: (1) negotiations to achieve a new agreement or amend the Anti-Ballistic Missile (ABM) Treaty of 1972 to allow for the deployment of defenses capable of protecting the citizens of the United States against limited ballistic missile strikes, and to permit development and testing of ABM technologies, including those covered by the Treaty and those not foreseen or defined at the time of the Treaty, and (2) a programmatic guideline that includes numbers of launchers and deployment sites, and sensors needed to fulfill the minimum requirements for a limited but effective defense system, as well as endorsement of deployment of theater missile defense (TMD) capabilities to protect U.S. forward-deployed forces and allies.

For the purposes of forcing a bipartisan consensus in favor of strategic defenses, a decision on inclusion of space-based interceptors in an initial limited missile defense architecture can be deferred for the time being. For many, deferring the inclusion of space-based interceptors as part of the initial deployment of limited defenses is a difficult decision. Many believe that space-based interceptors provide the highest degree of effectiveness and, in the long run, may represent the most cost-effective means of defending the United States. Others question the feasibility of space-based interceptors. But in the interest of providing the nation as soon as possible with at least some protection against ballistic missiles, and since our proposal would provide for an unfettered testing program for space-based interceptors to determine their effectiveness, we have decided to set aside this issue temporarily. What is achievable now is a limited defense system, a highly effective protection against accidental, unauthorized, or deliberate ballistic missile attacks of limited scope.

BACKGROUND

While the Iraqi use of conventionally armed SCUD missiles against Israel and Saudi Arabia posed no major military threat to coalition forces, or in the case of Israel, to its national survival, the missiles did threaten the lives of our troops and neighboring civilian populations and were enormously significant as a political terrorist weapon. Armed with lethal chemical or nuclear warheads, as may be the case in the future, these missiles could have caused devastating loss of civilian and military life, as well as severely disrupted military operations. There is little doubt, however, that the Patriot TMD system provided a degree of defense sufficient to permit Israel to forgo retaliation against Iraq, which in turn contributed to sustaining the solidarity of the multinational coalition of forces in the Persian Gulf conflict.

In the future, ballistic missiles from a variety of sources, combined with weapons of mass destruction, will pose an increasing threat to U.S. and allied forces overseas, and to the United States itself. These systems will have not only substantial political impact, but, most assuredly, military significance as well. The Director of Central Intelligence estimates that, by the end of the century, between fifteen and twenty developing countries will possess ballistic missile capabilities; at least six developing countries probably will have ballistic missiles with ranges up to 1,800 miles; and at least three of these countries may develop missiles with ranges up to 3,300 miles that could directly threaten the United States. Many of these countries are currently developing, or will soon have the ability to develop, nuclear, chemical, or biological weapons for possible delivery on ballistic missiles.

At the same time, we must not ignore the fact that the Soviet Union has presented, and, in its present unstable condition, will continue to present, the greatest ballistic missile threat to the United States. As the Chairman of the Joint Chiefs of Staff, General Colin Powell, stated in recent testimony before Congress: ". . . the Soviet Union remains the one country in the world with the means to destroy the United States in a single devastating attack." The Soviet ballistic missile threat to our land-based and in-port deterrent forces is more formidable today than in the mid-1980s, and the U.S. has not completed efforts which were started during the 1980s to reduce the vulnerability of these forces. In this regard, we should consider how a limited defense deployment would also complement a START agreement, by hedging or safeguarding against both technological surprise and unexpected changes in the threat to which a reduced force would be more vulnerable than a larger one. Defense of our deterrent forces against attack is an option that should be rapidly developed.

Given the combination of emerging Third World ballistic missile threats and the continuing challenge of the fully modernized

and highly lethal Soviet strategic nuclear force (the danger of which might even be heightened by internal Soviet instability and unrest), we believe the question for the United States is not whether we should deploy effective theater and strategic missile defenses, but rather, how many, of what type, and how soon? The safety and security of the American people, as well as the effectiveness of our deterrent, demand correct answers.

PHASE I TO GPALS

In 1983, President Reagan announced the Strategic Defense Initiative (SDI). SDI was structured as a comprehensive research effort to determine if ABM technology could be developed to protect the United States from a deliberate Soviet ballistic missile attack. A Phase I architecture was first outlined in 1987, consisting of ground- and space-based interceptors to defend both populations and deterrent forces against a large-scale Soviet ballistic missile attack.

When President Bush assumed office in 1989, he initiated a national security strategy review of ABM technologies and deployment options. In his State of the Union address of January 29, 1991, the President directed that "the SDI program be refocused on providing protection from limited ballistic missile strikes, whatever their source." The President shifted the near-term priority for the SDI program away from a strategic deterrence and defense approach to the more modest objective of protection against limited strikes. The restructured program, called Global Protection Against Limited Strikes (GPALS), is essentially the same set of systems and architecture as Phase I, except the number of ground-based interceptors is reduced by 50 percent and the number of space-based interceptors (Brilliant Pebbles) is reduced by 75 percent.

In recent testimony before Congress, General Colin Powell reiterated, however, that given the robust and fully modernized Soviet strategic nuclear threat, the original Phase I mission requirement remains valid. He indicated his support for the GPALS program and characterized it as an important and discrete step toward fulfilling the greater Phase I requirement.

The scaled-down GPALS program has shifted the terms of the SDI debate from deterrence and defense to a question of what type of defenses are necessary to provide protection against limited ballistic missile attack. This has, in turn, brought to the fore the issue of space-based interceptors.

Under the threat scenario against which Phase I was designed, there is no question that space-based interceptors are necessary to counter a massive missile attack. It is widely acknowledged that space-based defensive systems offer the best prospects of a high rate of ballistic missile intercepts over the aggressor's territory rather than the defender's, as well as significantly lower operations and support cost than ground-based systems. In addition, for purposes of providing an assured and effective global defensive capability, space-based interceptors are potentially the most capable component of such a defense. All of these factors hold true even for the GPALS architecture. In short, while we may decide to forego the deployment of space-based interceptors for political reasons, opponents of space-based interceptors must acknowledge their significant contribution to meeting the challenge of effectively countering ballistic missiles.

Skeptics of space-based interceptors, such as Brilliant Pebbles, argue that the technical data are not sufficient to know whether such a system is feasible or could be countered by the Soviets. The SDI program has made substantial progress in proving the technical feasibility of ballistic missile defenses and in assessing cost-effective and realistic countermeasures. We would note that, while testing data are currently limited on space-based interceptor technologies, review of the Brilliant Pebbles program by the defense Science Board and JASONs identified a couple technical challenges but no technical show-stoppers. Moreover, in large part, the development, testing, and demonstration of such high-leverage, space-based technology are restricted by Congressionally mandated limitations, and possibly restricted by the ABM Treaty.

Until both Congressional and possible Treaty restrictions on developing and testing ABM technologies are removed, it will be more difficult, costly, and time-consuming to prove fully the effectiveness of Brilliant Pebbles or other space-based interceptor technology in defending against missile attacks. Because of these restrictions, testing of Brilliant Pebbles technology is often designed around legal interpretation rather than engineering principles. In some cases, two or three tests may be required to carry out experiments when one test could accomplish the same objective more effectively. More importantly, we would be forced to make decisions to build a certain system on analysis of the test data, not on end-to-end testing as we do with normal military programs, again, because of Congressional and possible Treaty restrictions.

While opponents often raise questions about the technical feasibility of a certain missile defense component, in the end the central issue is a political one, having to do with our relations with the Soviet Union, questions of deterrence and the role of military systems in space, and the prospects for arms control. This debate, however, informed, seems to us to skirt the real issue: should we provide our citizens and our forces overseas with some defense against ballistic missile attacks? We believe the answer to this question is clearly in the affirmative. For this reason, we have outlined below a program that, we believe, forms the basis for a consensus on ballistic missile defenses.

A BASIS FOR CONSENSUS

In light of all of the above considerations, we believe that our obligations under the ABM Treaty, as interpreted by Congress, should be modified. We believe the initial objectives set forth herein are reasonable and, given recent statements by certain Soviet officials, could form the basis for successful negotiations.

These negotiations must be aggressive and time-limited. Otherwise, missile defense research cannot be pursued with fiscal efficiency or in a manner that will provide the nation with a timely defense capability against limited strikes. For this reason, a period of not more than two years should be established to negotiate satisfactory changes to the Treaty. If we do not achieve these negotiating objectives within that period, then we feel the Administration, in consultation with the Senate, must consider the options available to the country, including possible withdrawal from the ABM Treaty.

A key aspect of our suggested negotiating objectives is the right to increase the number of deployment sites and interceptors currently allowed under the ABM Treaty. Some proponents of limited defense systems suggest that we should limit deployment to 100 interceptors at one site (currently declared by the United States to be Grand Forks, North Dakota). Technical data and physics strongly indicate that such a Treaty-compliant deployment would not provide an effective capability to defend our citizens against the majority of limited strike scenarios. Such a system would only protect a small sector of the United States, leaving Americans on our coastlines and in Alaska and Hawaii totally vulnerable. Therefore, we believe it is critical that any negotiations result in higher ceilings for interceptors and multiple-site deployments.

While some elements of our overall proposal have been mentioned in a general way by others, what we have sought to do is to describe as specifically as possible a program that contains the minimum essential elements that we believe are required to provide an effective, limited defense system. But what we propose is only feasible if the two interrelated components—arms control objectives and programmatic content—are pursued in tandem. Pursued together, we believe they provide the basis upon which a bipartisan consensus and successful negotiations with the Soviets are possible. The details of the two components of the plan are outlined below:

Arms control component

Negotiate a new agreement or amend the ABM Treaty within two years or less to allow for:

Increased number of interceptor launchers and deployment sites,

Development and testing of all ABM technology,

Deployment of space-based sensors for direct battle management, and

Relaxation of restrictions on exporting ABM technology to our allies and friends to counter advanced, long-range ballistic missiles currently under development by third countries.

Clarify and further define U.S. rights for:

Space-based weapons, and

Development and deployment of TMD systems.

Programmatic component

Accelerated TMD program for our forward-deployed forces, as well as for our friends and allies, such as Israel.

Limited defense system consisting of:

5–7 deployment sites to protect the United States, including Alaska and Hawaii,

700–1200 fixed ground-based launchers, and

Space-based sensors for TMD and ABM battle management.

Development and testing of ABM technology to demonstrate space-based interceptor and other technologies for future deployment.

Defer debate for now over deployment of space-based interceptors.

CONCLUSION

Finally, if a consensus can be achieved, we also believe it is imperative that Congress fully fund the SDI program and rebuff attempts to restructure the program in ways that would deny the Administration the appropriate flexibility necessary to achieve the programmatic objectives outlined above. In this regard, it is important to ensure that follow-on technology efforts (including the development of Brilliant Pebbles technology) not be underfunded or eliminated. While we are willing to forego at this time the issue of space-based interceptor deployment as part of an initial limited defense architecture, we do not believe that it is in the national interest to preclude this technology option for the future. Again, we believe space-based systems provide the best hope for an effective means of countering ballistic missiles

for the future. Our nation must not be denied the right to determine if this is true.

We support, therefore, the requirement set forth and restated recently by the Chairman of the JCS, General Colin Powell, for a Phase I-like defense as a long-term goal, adapted or restructured to fit future geopolitical conditions. Until then, we believe we have identified a basis for a consensus which, if pursued aggressively, will culminate in a system that provides a minimum capability to defend against limited ballistic missile strikes.

PROGRAMMATIC COMPARISON

Programs	GPALS	Consensus program
Theater Missile Defense	Yes	Yes.
Ground-based interceptors (multiple sites).	Yes	Yes.
Space-based sensors	Yes	Yes.
Brilliant pebbles: space-based interceptors (development and testing).	Yes	Yes.
Brilliant pebbles: space-based interceptors (deployment).	Yes	Defer decision.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Minnesota.

EXTENSION OF MORNING BUSINESS

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the period for morning business be extended for 7 additional minutes.

Mr. REID. Mr. President, I am sorry. I could not hear the request.

Mr. DURENBERGER. The period for morning business be extended for an additional 7 minutes.

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada reserves the right to object.

Mr. REID. Mr. President, under the unanimous-consent order I was to talk at 10. I am most happy to see a number of people around the Chamber who wish to speak as if in morning business. Can we find out who wants to talk and how long so we at least have some order here because there are a number of people want to speak for my motion to strike and against it? I think we need to do that and have a little bit of order here.

Mr. DURENBERGER. Mr. President, I am aware of only two, the Senator from Nebraska and me, who would each like to speak for 3 minutes. I see the Senator from Pennsylvania also indicates an interest to speak for 3 minutes. So I will revise my request and ask unanimous consent that the period for morning business be extended for an additional 9 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Minnesota is recognized.

TRIBUTE TO VINCENT GENTILINI

Mr. DURENBERGER. Mr. President, I rise today to salute an old friend of mine, and a great friend of the people of the seven-county Arrowhead region of northeastern Minnesota. For 26 years, Vincent Gentilini has guided the Arrowhead Economic Opportunity Agency as it became one of the largest and most respected community action organizations in the Nation. On June 19, Vince will retire as executive director.

Vince Gentilini was born in Vol de Sole, Tyrol Province, Italy, 70 years ago. He emigrated to Chisholm, MN, with his family when he was 8 years old. Vince served in the United States Armed Forces during World War II in New Guinea, the Philippines, Australia, and Japan. When he came home, he married Lillian and, together, they began their family which now includes four children and three grandchildren.

In 1965, following the passage of the Economic Opportunity Act, Vince was named to head the newly incorporated Arrowhead Economic Opportunity Agency. This private, nonprofit organization started with a $35,000 Community Service Administration grant. Today, the agency supports a diverse group of programs such as Employment and Training Services, Emergency Services, Minnesota Momentum for Women and Head Start, with a multimillion-dollar budget. Then and now it serves the people of Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, and most of St. Louis Counties.

Arrowhead Transit, the agency's transit program was started in 1974. Under the guidance of Vince Gentilini, it is now the largest rural public transportation system in the Nation. A new transit facility housing 30 buses, a repair shop, a wash bay and administrative offices was completed in Gilbert, MN, and named for Vince in appreciation for his leadership and commitment to rural transportation issues.

My friend, Vince Gentilini, is called compassionate, generous, quick to recognize what the heart of the community needs. His friends say he has, throughout his 26 years as director of the Arrowhead Economic Opportunity Agency, exhibited the foresight, initiative, leadership and tenacity to develop one of the most respected community action agencies in the Nation. Through it all, Vince has remained true to the mission of the agency, "people helping people."

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. KERREY].

THE GAO'S ASSESSMENT OF THE RESOLUTION TRUST CORPORATION'S PERFORMANCE

Mr. KERREY. Mr. President, yesterday in testimony before the Senate Banking Committee, Charles Bowsher, Comptroller General of the United States, provided a disturbing assessment of the performance of the Resolution Trust Corporation [RTC]. Mr. Bowsher's testimony points out numerous problems within the RTC from poor accounting procedures that make it difficult for the agency to balance its books to its inability to develop sound information management systems.

Although these matters are of great concern and I compliment the GAO for working with the RTC to address them, we run the risk of ignoring the underlying problem: the failure of the members of the RTC's Oversight Board to get the job done.

Consider the GAO's concerns about the RTC's operations:

Instances where offices have no system to prevent duplicate payments to contractors and have poor controls over incoming cash;

Instances where some offices simply receive rent and mortgage payments sent in by contractors without determining whether the RTC has received the proper amount;

Poor contract oversight allowed one contractor to bill the agency for $120,000 a month in operating costs without being questioned by RTC oversight personnel;

A poor information management system allowed the agency to sell the same piece of real estate worth $7.4 million to two different individuals;

Lack of provisions in place to penalize contractors who do not perform agreed-upon work, except cancellation of the contract, and some RTC field offices pay contractors without examining their work.

Instances where contracts have been awarded without evidence of competition or to firms that were not even registered to do business with the RTC.

Mr. President, in addition, in 1990 the RTC paid out over $600 million for legal fees outside the RTC office. In any other case where a board charged with oversight, whether it be a school board, a bank board, a county board, any other board of directors that performed in this fashion, we would hold that board accountable for their performance.

Before any consideration is given to changing the structure, which I believe must be done, attention must be given to the personal responsibility of this five person board to exercise oversight. I acknowledge the difficulty that their job entails. Acknowledging the difficulty of their job does not excuse their failure thus far to get their job done. Recognizing the uniqueness of their task does not excuse the poor performance of this board.

I am willing to allow that the other responsibilities of Treasury Secretary Brady, Federal Reserve Board Chairman Greenspan and Housing Secretary Kemp are such that they cannot give as much time to the oversight of the RTC. However, this is an observation each should have made 2 years ago. Further, it is an observation which should have caused them to say no to the added responsibility.

Mr. President, the GAO report also increases the urgency to change the structure of RTC oversight. Absent a charge in the agency dual board structure and the consolidation of authority in the hands of a single board under the leadership of a strong chair, the Congress will simply continue to be faced with report after report indicating that the RTC is plagued by contracting problems or spent more than an half a billion dollars in 1990 on legal fees or is unable to move its huge inventory of real estate.

It is a mistake for Congress just to react every time we hear horror stories about the RTC's operation. Without ridding ourselves of responsibility for our oversight role, we need to recognize the RTC's Oversight Board simply failed in its task. We no longer can afford to have an oversight board run by three individuals whose tremendous responsibilities in other areas prevent them from providing full-time guidance to the RTC. We no longer can afford to have a board of directors that simultaneously has its hands full addressing the problems in our country's banking industry. We need a full-time, hands-ons board.

I yield the floor.

Mr. WOFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 3 minutes.

WALTER W. GIESEY

Mr. WOFFORD. Mr. President, I rise today to pay tribute to one of Pennsylvania's and, indeed, this Nation's great public servants, Walter Giesey. His career of more than 40 years in local, State, and Federal Government affairs embodies the best American tradition of citizen service.

As an adviser to Pittsburgh Mayor and Pennsylvania Gov. David Lawrence, to Presidents Kennedy and Johnson, to the Allegheny County Commissioner Tom Foerster, to the president of the University of Pittsburgh, and most recently to Gov. Robert P. Casey, Walter Giesey has helped shape and implement programs that have changed the face of Pennsylvania and America.

In the fifties and sixties he fought to turn a soot-stained Pittsburgh into one of America's most beautiful cities. In the sixties he helped lead the fight for fair housing.

In the seventies he fought to expand support for higher education. And, in the eighties, he fought to make State government work for Pennsylvania's working families.

I would like to put in the RECORD an editorial from the Pittsburgh Post Gazette, dated 1943, which captures his love for Pennsylvania and his lifelong commitment to making America a land of real hope and opportunity and happiness for all of our people.

The editorial quotes a letter Walter wrote as an Army Air Corps pilot in World War II, a letter of reflections on why he was fighting.

I am fighting for Paul and Peter and Hans and Wong and Jose—all the people all over the world. I'd like to see them have the things I've had—my freedoms, my fun, my comforts. I don't want them to be subservient to me; I want them to be equal to me.

There are other things, none of which can be brought about by just me. But there are millions of men like me in uniform in addition to all of you back home who can bring it about.

* * * * *

While flying yesterday, I looked down at the countryside. I saw the fields being plowed, forests, streams, railroads, homes and roads. It was peaceful and calm from up there. I'd like to see it that way down on the ground

I've left many things out and perhaps I have failed to show you exactly what I have meant to say.

You need only read between the lines and you'll find all the countless little things which put together, make me feel proud and strong and resolved to fight hard until I can go home to the things I knew.

That moving message of 1943 is as true today as it was then. Just as Walter Giesey and his belief in the common good is as true and as necessary today as then, and even more so.

Mr. President, the city of Pittsburgh, the Commonwealth of Pennsylvania, and the United States of America owe a debt of gratitude to our great citizens like Walter Giesey. I am proud to call him my friend and my colleague.

And I hope his example will help us all feel proud and strong and resolved to continue his fight for the country and the Commonwealth he has known and loved so much.

IT'S TIME TO STOP SHORTCHANGING NORTH CAROLINA

Mr. HELMS. Mr. President, each time Congress reauthorizes the Federal Highway Program, it is an important and often contentious matter. This year's reauthorization is the most important reauthorization in 35 years. Over the last several days it has become more and more apparent that it will also be the most contentious.

Mr. President, the Interstate Highway Program—first funded in 1957—is on the verge of being completely finished. Therefore, the priorities Congress sets for our Nation's various transportation needs now will be the Nation's transportation priorities for the next decade or two, not just the next 5 years.

In other words, the most important part of this debate, Mr. President, will be how the $92 billion in Federal highway funding will be distributed among the States, not just for next 5 years, but for the next decade and beyond. For 35 years, as a result of the 1957 legislation that created the Interstate Highway System, North Carolina and many other States have consistently—year after year—sent more money to Washington in transportation fees and taxes than they have received in return.

In fact, North Carolina has sent $1.7 billion more transportation dollars to Washington since 1957 than it has received in return. In just the last decade, the citizens of North Carolina sent $500 million more to Washington than they received. Last year, North Carolina got a pitiful 54 cents back for every dollar we sent to Washington.

Mr. President, North Carolina needed those funds, but like other States that have been shortchanged, we "donated" this money to assist less populated States in building their portions of the National Interstate Highway network because those States could not have built those roads without help.

At the same time, North Carolina and the other donor States—primarily in the South and the Midwest—have also been compelled to donate highway and mass transit money to more populous and relatively wealthier States in the Northeast.

The Federal Government was acting like Robin Hood in reverse, Mr. President: Taking from the poor States to give to the rich ones. It should be obvious that forcing States like Alabama and Mississippi to pay for highways and subways in New York is patently unfair.

It is sad to say that even though the Interstate System is almost complete and thus the need for some States to donate to other States is no longer as necessary, the pending bill will continue to take money from so-called donor States as if the Interstate System were still being built. The pending bill continues to use the same inequitable funding allocation formulas as under current law—funding formulas that in some instances continue to use assumptions from as long ago as 1916.

The pending bill thus fails to mitigate in any way the amount of money that donor States like North Carolina will be required to contribute to other States.

Under the pending legislation, North Carolina will continue to receive less than 84 cents for each transportation dollar that the citizens of North Carolina send to Washington. On the other hand, New York will receive a whopping $1.27 for each transportation dollar the citizens of New York send to Washington. In fact, almost every State in the Northeast—States with large populations that ought to be able to pull their own weight—gets more money back than it puts into the Federal Highway Program.

Let's look at how a few of the other Northeast States fare under the pending bill: For the 5-year period beginning in 1992, Rhode Island would get $1.66 for every dollar paid into the highway fund; Vermont would get $2.10;

Connecticut would get $1.46; Massachusetts would get $1.05; Delaware would get $1.62, and so on.

Mr. President, I should also emphasize that these figures do not even include the large amounts that are transferred under the Mass Transit Program. Of course, some of the States I've just listed will receive the lion's share of the Federal Mass Transit Program funds as well. I note that in the Federal Mass Transit Program last year, North Carolina got back a mere 5 percent of the $45 million we sent to Washington for that program.

Mr. President, let's also look at some of the many—too many—other ways this bill is designed to help the Northeast at the expense of the rest of the country.

The bill takes $750 million in highway funds and devotes it to a magnetic levitation rail demonstration project. It is widely understood that this rail line will be built in New York City.

Another $2.55 billion is earmarked for a harbor-tunnel and central urban artery highway project in Boston. The Boston project is of purely local interest. Yet the Federal Government is going to take money from North Carolina and other donor States to pay for this local highway project in Massachusetts.

Since this project entails building a tunnel under the Boston Harbor, I find it quite strange that we have heard so little from the radical wetlands environmentalists that have plagued transportation projects in the rest of the country. Perhaps it is because many of these self-proclaimed defenders of the environment congregate in Boston and value the convenience of the tunnel over any possible environmental impact.

Mr. President, the pending bill also moves $13.3 billion out of the highway account and into a bridge account. It so happens that this transfer is of enormous benefit to New York. New York has severe problems with its bridges because it has failed to maintain its bridges through painting and other basic maintenance. Last year, in fact, New York City had to close the Williamsburg Bridge due to deterioration caused by rust, which was caused by the city's failure to paint the bridge.

Some New York officials blame this situation on the fact that the Federal Government pays States more to build rather than to maintain bridges. However, the Federal Government's program was always targeted to help States with the high cost of building bridges. After construction, the States were supposed to pay the lower costs of maintenance themselves.

North Carolina has problem bridges, too, but those problems are due to age, not a lack of maintenance. That's because North Carolina imposes a high 2.5-cent gas tax to pay for such maintenance. New York, on the other hand, has a 7-cent gas tax. But now, after years of neglect, New York wants the rest of the country to help it make repairs that are solely due to its own fiscal mismanagement.

Mr. President, the pending bill will also have the effect of forcing donor States to subsidize the exorbitant union wage scales of New York and the other Northeastern States. For example, in North Carolina it costs $37 per square cost foot to build a bridge and $25 a square foot for repairs. In New York, on the other hand, its construction companies charge an average of $102 a square foot to build a bridge and $69 a square foot for repairs. The pending bill perpetuates the current inequities in the bridge allocation formulas, and once again North Carolina and the other donor States will be at the bottom of the list.

Mr. President, the pending bill also penalizes States with growing populations. It does so by embedding 1980 census numbers in the highway allocation formula and eliminating the Federal Highway Administration's authority to use the 1990 census data when it becomes available. The pending bill ignores for the next 5 years—possibly longer—the huge shifts in population out of the Northeast and into other parts of the country since 1980. Consequently, the Northeast will get more Federal highway dollars than ever while Northeast States are losing seats in Congress.

Furthermore, the pending bill is antigrowth in that it penalizes States for the construction of expansion of highways as opposed to simple maintenance. The Federal/local matching requirement for new construction is 75 to 25 percent; however, the matching requirement for maintenance needs in the no-growth States of the Northeast is 80 to 20 percent. Maintenance gets a significantly higher Federal funding share than does construction, which hurts those States with growing populations.

Mr. President, North Carolina is still trying to make up construction delays caused by inadequate Federal funding in the past. That is why North Carolina embarked on an ambitious 10-year highway building program just last year only to be met this year with the pending bill's proposal to penalize new construction.

Mr. President, I am also disturbed that even though highway users are the people taxes to support the highway trust fund, this bill moves significant amounts of money away from spending on highways and uses it to pay for mass transit instead. Gas taxes already fund a specific mass transit program, and that program—not the highway account—should be used to fund mass transit.

Mr. President, as I and others have pointed out, most of the extra money awarded to the Northeastern States in the past, and under the pending bill, comes from States in the Southeast and the Midwest.

The Senator from Virginia [Mr. WARNER], whose own State suffers under the pending bill, has offered an alternative proposal that recognizes that the interstate highways are almost complete. I am proud to be a cosponsor of that bill.

Our proposal uses a new allocation formula based on current statistics and assumptions and will incorporate the data from the 1990 census as soon as it is available. As a result, Senator WARNER's formula is vastly more equitable to those States that have been forced to pay tribute to the Northeastern States for the past 35 years.

Even under the Warner bill, North Carolina, Virginia, and the other 17 donor States still will not get back 100 cents for every highway dollar they send to Washington, but they do much better than they would under the pending bill.

We realize that the sparsely populated States out west will still need some help maintaining the interstates and other national highways, but we see no reason why our States must be compelled to subsidize large metropolitan States. These States should not receive inordinate subsidies at the expense of North Carolina and other so-called donor States. As I said earlier, the urban States already receive enormous Federal subsidies for their unique transportation needs through the Federal Mass Transit Program.

Fair is fair, Mr. President, and the pending proposal is not fair. The donor States have been patient, they have been generous, but now is the time for Congress and the other States to recognize our contribution.

The donor States are not even asking for a dollar for dollar return on our gas taxes. We are asking only for a formula that brings us closer to parity by using current assumptions about the Nation's demographics and the latest census figures so that highway apportionments are fair and equitable, not arbitrary.

The pending bill will continue to give North Carolina less than 84 cents for every dollar sent to Washington. Our alternative would give North Carolina at least 94 cents back on the dollar.

Mr. President, the pending bill does not promote a new vision for the U.S. transportation system into the 21st century. It promotes a new vision for transportation in the Northeast into the 21st century. Fairness and equity demand that the concerns of the 19 so-called donor States be addressed before a new highway reauthorization bill becomes law this year.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time has expired. Morning business is closed.

SURFACE TRANSPORTATION EFFICIENCY ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 1204, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1204) to amend title 23, United States Code, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Byrd amendment No. 295, to allot bonus apportionments based on the level of effort shown by each State.

(2) Byrd amendment No. 296 (to amendment No. 295), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, the Senator from Nevada [Mr. REID] is recognized to offer an amendment.

AMENDMENT NO. 304

(Purpose: To strike section 137, visual pollution control)

Mr. REID. Mr. President, pursuant to that order, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 304.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Strike section 137 of the bill.

Mr. REID. Mr. President, as I have indicated on this floor as late as yesterday, I think this is a good bill. But there are some problems with it and one problem I hope to correct today.

I stand before you and our colleagues reminded of the saying of the former great New York Yankee, Larry "Yogi" Berra when he said—and of course he was famous for crystallizing the common man's frustration with trivial pursuits and endless debate—he said, "It's deja vu all over again." And as another philosopher, Santayana said, "Those who cannot remember the past are condemned to repeat it."

Mr. President, I remember the past. About 4½ years ago, I sat in these Chambers as a new Senator, witnessing a full-scale debate on the very issues contained in Senator CHAFEE's current proposal to ban outdoor advertising.

At that time, Senator Stafford of Vermont had offered the same proposal. It was rejected then; it should be rejected now as punitive and destructive to the outdoor advertising industry; as paralyzing to small business; and, most importantly, as the introduction of a dangerous virus against private property rights as guaranteed by the Constitution of the United States.

In preparing for today's debate, I reviewed statements found in CONGRESSIONAL RECORDS, but especially for the RECORD of February 3, 1987. At that time, I noted statements in support of Senator Stafford's amendment. I do not think, Mr. President, that you will hear anything new today offered by those who want to, in effect, outlaw outdoor advertising. No new facts, no new astonishing developments, no incontrovertible information to compel this body to reconsider its steadfast desire to continue protecting the mandates of the fifth amendment. The fifth amendment of our Constitution says "nor shall private property be taken for public use without just compensation."

That is a quote directly from the Constitution of the United States. And of course the fifth amendment also talks about due process, as does the 14th amendment. Due process, a concept of the common law. What is it about? Due process is about fairness.

Some will rise today to exclaim the importance of eliminating billboards as an environmental initiative. Mr. President, in one county in Nevada, a newspaper there refers to me at least once a month as "Sierra Harry." My credentials on environmental issues, I would hold up and compare them to anyone in this Chamber.

I am responsible, Mr. President, for creating America's newest addition to our National Park System, the Great Basin National Park, a park that was originally envisioned almost 60 years ago by President Reagan's park director Mr. Mott. This park is beautiful. Mountain peaks of over 12,000 feet. We have a glacier; we have the oldest living things in the world at Bristolcone Park, over 5,000 years old. We have the famous Leeman Caves. It is a great, great facility for all America but especially for Nevada.

Mr. President, I worked for 5 years, 5½ years to be exact, to get the Nevada Forest Service Wilderness; worked long and hard; passed a bill twice in the House. And finally we were able to get a Forest Service wilderness bill almost 30 years after the Forest Service Wilderness Act was passed. And the wilderness created in Nevada, Mr. President, is unbelievable. Areas that have mountain sheep, even mountain goats, elk, antelope, beaver, eagles, towering mountian peaks, great valleys.

We created 11 new wilderness areas in the State of Nevada, places that will be there for all generations of time, for my children and their children's children to visit pristine areas, areas the way they were prior to the white man coming.

I also worked to help create a Red Rock Conservation Area, an area right outside Las Vegas, an area that is geologically important, an area that is archeologically important. We just went a few months ago to dedicate that area, the crown gem of all the Bureau of Land Management's property, the millions and millions of acres they control. This is, as they have indicated, their crown jewel.

Last year, after 4 years of work, the President signed, on November 16, the Pyramid Lake water settlement, which protected two endangered species, resolved problems with two Indian tribes, saved valuable wetlands that had gone from 80,000 acres to about 2,000 very toxic acres of wetlands—wetlands that birds could no longer live in, where fish were dying. This legislation also ended a 100-year water war with the State of California, protected the Pyramid Lake and the Truckee and Carson Rivers.

So, I do not think Senators who support this motion to strike should envision themselves as being antienvironmentalists. This is not, Mr. President, an environmental issue. Toxic dumps, nuclear waste, clean air, soil erosion, issues relating to recycling, traffic congestion, wildlife protection—these are environmental issues. Outdoor advertising is not an environmental issue.

This is, though, Mr. President, a matter of States' rights. Current law allows, and has always allowed, States and cities to restrict or even, if they want to, eliminate billboards. In fact there are four States, Maine, Vermont, Hawaii, and Alaska—they have outlawed billboards. Numerous cities have outlawed billboards. Certain counties have outlawed billboards. They have that right, right now. It is their prerogative under existing law.

I might add, the law is extremely effective. In 1966, the State of Nevada, as an example—it is that this way all over the country but let me give Nevada as an example—reported 2,758 nonconforming and illegal signs. We will hear a lot today about nonconforming. Nonconforming signs are those that are erected legally and later found to be in nonconformance with new zoning laws.

In 1966 the State of Nevada reported 2,758 nonconforming and illegal signs. In 1991, 25 years later—and keep in mind, the State of Nevada has grown tremendously, it is the fastest growing State in the Union—as of June 6, 1991, 25 years later, there were only 6 nonconforming signs compared to almost 2,800. And, though the number varies from day to day, there were no illegal signs. So, Mr. President, the current law works.

Nationwide, the Congressional Research Service reports that the number of billboards has decreased 65 percent, from 1.1 million in 1966 to 390,000 in 1990. How many more statistics do we

want to hear, to prove the current law is working?

What those should acknowledge who will not support my motion to strike is they just do not want billboards, and this is a way to get rid of all of them. Is that what the debate is all about? It is not about the environment. It is not about States rights. Remember, the States already have the prerogative to deal with outdoor advertising. And it is not ineffective current law. This debate is about the very core of constitutional guarantees. It is an issue of private property rights.

What current law will not allow, and what we are debating here today, is the ability of States, counties, and cities to remove billboards without money compensation. Senator CHAFEE's provision in this bill introduces the concept of amortization as satisfactory compensation to billboard owners who lose their property.

Let me explain how amortization works. It is a word we do not hear very often, amortization. What does it mean? It simply means that rather than the State or local government paying money compensation to billboard owners, the owners would be allowed a grace period to have the billboards removed. In other words, a billboard owner would be allowed to keep his sign for a period of 3 to 5 years. And this will be considered full payment; full compensation. At the end of this time, the billboard owner must still remove the sign at his own expense. As we will hear a little bit more later, not only is he forced to remove the sign at his own expense, but he cannot use the materials for another sign anyplace.

As an example, if I purchase a piece of property for the purpose of erecting a sign, payable $500 a month for 10 years, then I lease property to an outdoor advertising company for $500 a month for 15 years, and along comes the Federal Government a couple of years later and they say take the sign down, but we are going to allow you to keep it up for 3 years, maybe 4 years, at the most 5 years. I still have to continue making payments on the piece of property for the next 5 or 10 years, whatever the period is that they will not allow me to rent my property. And with no compensation. This simply is not fair.

George Will, probably the most read syndicated columnist, recently wrote one of his columns about this very subject. In his article he labeled amortization as, "slow motion confiscation."

In looking directly at this George Will column, let me refer to the Senate a couple of other things he said.

> It is disingenuous to dress up the proposed language in Jeffersonian language about "restoring local control." States already have the power to regulate, even ban, billboards with just compensation. The question is, shall constitutional values be disregarded because Americans would prefer not to pay the price—compensation—of an improvement they desire?
>
> In this era of $400 billion deficits, Americans are adept at making others, the voiceless and the voteless generations to come, pay a significant portion of the price of today's choices. Taking the property of billboard owners, and diminishing the value of property of people who rent land for billboards, and doing this without proper compensation, fits today's political morality. Enjoy the benefit, make others pay.

We should all listen closely to what George Will said. We, in effect, are taking people's property without just compensation, in violation not of some ordinance or regulation, but in violation of the U.S. Constitution.

There are other papers that talk about it but let us talk about a small Nevada newspaper which said:

> There are exceptions, of course. For example, when you are driving a carload of unruly kids and can calm them momentarily with the knowledge gleaned from one of those signs that only 20 miles ahead lies a gas station with sodas, candies, and bathrooms.

I have five children and this paragraph from a Nevada newspaper brought back a lot of memories. When we used to travel with the kids there was one billboard that we always used to have a lot of fun with. I think it was a place called Stuckey's. They had them all over the West.

They had them all over the West. As we drove the streets of the West, there would be these signs advertising these luscious things in this—it was a service station really—little place to buy goodies. The goodies were never as good as they appeared on those billboards, but we had a lot of fun. That is the way we could calm our children, waiting until we got to Stuckey's.

So this Nevada newspaper brought back certainly a lot of memories to me and my family. Most of us kids are grown now and not at home, but it was a lot of fun.

The newspaper further goes on to say:

> The problem is a little glitch found in the Bill of Rights, the taking clause of the 5th amendment. That clause stipulates the government cannot take private property, billboards, for example, without just compensation. It is this idea of the Founding Fathers that trips up on the march to a billboardless America. Too bad. If the government wants to deprive billboard owners of their property, it will have to pay. Ignoring the Constitution is surely more costly than the price of all the billboards in America.

When Congress enacted, Mr. President, the Highway Beautification Act of 1965, one of the important issues was whether billboards should be removed by the exercise of the police power or by payment of just compensation. The Congress decided in 1965, almost unanimously, that just compensation should be paid rather than removing signs by police power without payment.

A few years ago, a Colorado court struck down a Denver amortization ordinance which would have allowed the city to confiscate $6 million worth of billboards. In its decision, the court said:

> This court feels that unless municipalities are to be given unbridled latitude to take property, and if the Constitution is to retain any meaning, then strong steps must be taken to advise the government that this kind of attitude and action are unacceptable.

More recently, the Supreme Court of Pennsylvania issued an even stronger indictment on amortization. I again quote:

> It is clear that if we were to permit the amortization of nonconforming uses in this Commonwealth, any use could be amortized out of existence without just compensation. Although such a zoning option seems reasonable when the use involved some activity which may be distasteful to some members of the public, no use would be exempt from the reach of amortization, and any property owner could lose the use of his or her property without compensation. Even a home owner could find one day that his or her castle had become a nonconforming use and would be required to vacate the premises within some arbitrary period of time without compensation. Such a result is repugnant to a basic protection accorded in this Commonwealth to vested property interest.

What is involved then is the right of a legitimate industry to do business. Just as important as the right to do business is the right to possess private property without fear that the State will confiscate it without fair compensation, again, taking the exact verbiage, the exact language from the Constitution of the United States.

The provision that is sought to be deleted from this worthwhile piece of legislation is a serious threat to these fundamental rights. This bill threatens to put out of business a legitimate industry.

In Nevada, for example—and Nevada is a very small State—the 1989 payroll figures for the industry total almost $5 million with 160-odd employees. The industry paid taxes, made purchases from suppliers in the sum of almost one-half million dollars, property leases totaled $4.7 million, payment to utilities were almost one-half million dollars, and the industry donated over $1 million in public service advertising.

Half the billboard clients in Nevada are tourist-related clients who employ, Mr. President, almost 400,000 people in the State of Nevada. Who is going to compensate them when we take down their signs and they lose their jobs?

There is a man in Nevada by the name of Ron Rieger who owns a family operated billboard company. He started out in the business in 1955 as a kid and started his own operation in 1966 with an investment of about $15,000. He did it all himself.

In the beginning, he was the painter, the carpenter, the salesman, even the brush washer. Today, this family business has grown a lot. It is not a big business but it has grown from the time when Ron Rieger did everything himself. But this bill threatens the

very existence of Ron Rieger's company. It threatens over 35 years of work of Ron Rieger and his family. A life's work. What is going to happen to this family when we tell them that you cannot sell billboards anymore, and by the way, we are not going to pay you to take down the ones you own?

Another man I spoke with told me in 1974 he worked for the State government. He was an aide to the Governor of the State of Nevada at the time, former Governor of the State of Nevada.

He at that time got an idea that if he bought a piece of land, he could rent that piece of land to a business that was along one of the highways in Nevada. He bought that piece of land for $36,000 on time, made payments to buy a piece of property and to put up one billboard. He bought the piece of property, put up the one billboard, and over a period of years leased that billboard. As a result of that, he was able to put one of his kids through school. He does not have the billboard anymore, but it served a purpose.

This legislation, this deletion, this motion to strike, this amendment to strike this language from this legislation is supported by a wide range of people. How often do you find the Wall Street Journal joining with AFL-CIO? Not often. But we have an instance with this legislation where, in fact, they do agree.

I received today a letter from the Department of Legislation of the American Federation of Labor-Congress Industrial Organization, AFL-CIO. This letter was written to all Senators, I assume:

The first amendment will be offered by Senator Harry Reid. The purpose of the Reid amendment will be to strike from S. 1204 language added in committee by Senator Chafee that would ban the construction of new billboards on the Federal interstate and primary highway system.

Since 1963, the AFL-CIO has had convention policy opposing the type of ban contained in the Chafee language. A ban on the construction of billboards would cost tens of thousands of jobs among painters, carpenters, sheet metal workers, teamsters, electrical workers, operating engineers and other workers in the outdoor advertising industry. The AFL-CIO supports the Reid motion to strike, and we urge you to vote in favor of the Reid amendment.

As I said, how often do we get the AFL-CIO to agree with the Wall Street Journal? Today's Wall Street Journal is in favor of my motion to strike. Among other things, this Wall Street Journal article states:

The bill would let local governments—

Listen to this word—

expropriate billboards, then "pay" compensation to the owners simply by giving them a few years before the signs must come down. In other words, for the privilege of getting to use their property for a few more years, owners would then simply hand over the property to the government without getting a dime in actual compensation.

The argument—

Mr. CHAFEE. I wonder if the Senator will yield for a question?

Mr. REID—

"The argument that the permission to operate one's property is a benefit," Theodore Olson, a lawyer for billboard companies, says, "is no different than the argument that the thief's demand 'your money or your life' benefits the victim by granting him his life."

Mr. CHAFEE. I wonder if the Senator will yield for a question?

Mr. REID. Not right now. Let me repeat that:

"The argument that the permission to operate one's property is a benefit," Theodore Olson, a lawyer for billboard companies, "is no different than the argument that the thief's demand 'your money or your life' benefits the victim by granting him his life."

As an economic matter, the amortization theory is far from full compensation. How can an owner be compensated simply by getting a few years' notice that he is going to lose all the value in his property? Under this reasoning, a city could announce that there can be no buildings taller than 10 stories, then announce owners will be compensated by allowing them to occupy the buildings for 5 years before leveling them; or a local government could claim eminent domain over your house to build a highway, then claim the compensation is a delay in the highway construction for a few years.

The constitutional requirement that the government must fully compensate citizens for any seized property is perhaps the most important limit on the size of government. East Europeans who look forward to a capitalism vibrant enough to support billboards learned this lesson so well that they are writing similar protections into their new constitutions; a similar protection, something similar to the fifth amendment.

I would be happy to yield to my friend from Rhode Island for a question.

Mr. CHAFEE. I ask the distinguished Senator from Nevada if I am correct in saying this is not a Wall Street Journal article. This is an op-ed piece written by a non-Wall Street Journal individual who submitted it and it was accepted by the newspaper. In other words, it is an op-ed piece rather than an article or an editorial. Am I correct in that?

Mr. REID. I am certain that is the case. I see it is the case. However, I would almost bet the Wall Street Journal allowed this article to be printed or it would not be there. So it is in the Wall Street Journal. It appears to be something the Wall Street Journal allowed in their newspaper.

Mr. CHAFEE. I am not going to doubt for any reason the Senator from Nevada. But I just wanted, off the record, to be clear this article was not an editorial nor an article from the Wall Street Journal, but instead was an op-ed piece.

I thank the Senator.

Mr. REID. I did not refer to it as an editorial. I do not think I did. But, if I did, I certainly was mistaken. It is not an editorial. I do not believe I said it was.

Mr. President, I own some property in Nevada. It is in rural Nevada, along a road built mostly with Federal moneys. I have had people write to me over the years saying, "Can we put a billboard up on your land?" Sometimes they have even sent contracts. Well, I do not want billboards on my land. I did not want them, do not want them, and do not intend to put them on my land. But the point of the matter is why should the Federal Government step in and tell me I cannot put them up on land out in the State of Nevada, land that has been in the family one way or the other for a long time.

I just think it is absolutely wrong for anyone to consider that I should not be allowed to do what I want on property I own. What right does the Government have to tell me what I can do with my private property? What if I wanted to build an ugly house along the interstate; or let us assume a nice looking, beautiful home, in my mind? Who is to decide whether this home on my property is beautiful or ugly? If it is deemed ugly, will the beautification committee allow me to live on it for 3 years as compensation, then make me take it down at my own expense, and not allow me to use any of the building materials out of that home for another home?

What will the next step be; removing ads from magazines, newspapers, and television because they offend us, whoever "us" is?

How do you censor free speech in one instance and protect it in another? You cannot.

Many billboards are not only informative and helpful, but they are entertaining. Many of you remember the Burma Shave billboards. I have here, Mr. President, a book. Burma Shave ads were so good that we have a book on Burma Shave ads. It is a book full from one end to the other of Burma Shave billboard advertising.

As I said, I am sure the Presiding Officer remembers Burma Shave ads. They are famous. Beginning in the Depression, and for many decades thereafter, an unusual national billboard campaign was born outside of Minneapolis, MN. First it started out with tiny wooden signs measuring 1 by 3 feet. They were placed at 100-foot intervals in sets of six, expounding the wonders of a brushless shaving cream called Burma Shave.

These signs were written in verse, with each sign displaying one line of the poem. Who could remain uninterested or unamused for long when greeted on the road by copy lines like this:

The Bearded Lady
Tried a Jar
She's Now
A Famous
Movie Star
Burma Shave.

Or public service ads like this:

It's Best for
One Who Hits
The Bottle
To Let Another
Use the Throttle
Burma Shave.

The Burma Shave signs became such a national institution, Mr. President, that the U.S. Navy once asked if they might put up three sets of signs in the Antarctic. It seems there was a particularly long stretch of submarine duty where the men did not see land for several months, so, at a rather famous crossing through a pass of treacherous ice, there sitting in the snow were the Burma Shave signs reading:

The Whale
Put Jonah
Down the Hatch
But Coughed Him Up
Because He Scratched
Burma Shave.

As I said, Mr. President, there is a book full of these made famous by billboards. These famous signs brought a company from the days of handing out jars on approval to a $3 million, nationwide industry, and in those days that was a big business.

Some of you will also remember the billboards for Harold's Club. Harold's Club was located in Reno, NV, but they had billboards with a wagon train on them all over the world, literally all over the world. The sign said "Harold's Club or bust." And then it would put how far it was to Reno, NV. Signs back here said 3,000 miles; Salt Lake City, 500 miles; and on down, and however far it was.

There are two other parts of this legislation that I am asking to be stricken, which are absolutely unbelievable. The first is that a billboard owner cannot cut vegetation that grows up to block the sign. Of course, it should be illegal to cut down State-owned trees or shrubs. It already is. But if you are going to tell me I cannot cut down a tree on my property, in Searchlight, NV, or wherever it might be, I think you are wrong.

Mr. President, referring to the transcript of this hearing that took place, as I indicated, the last time this matter came up, I think there is something I would like to refer to. This was initially brought up during the debate then initiated by Senator SYMMS of Idaho. He said then—and this applies all over the country today—Idaho has only one documented case of vegetation removal without approval by the State. The law is there now. I mean, this is really a red herring.

The other provision which I think is incredulous is that a billboard company cannot use material from a billboard they have taken down to build another billboard, even a legal billboard. Is this fair? Does this make sense? Of course it does not make sense, and of course it is not fair.

Again, referring to the debate that took place a couple of years ago, Senator HEFLIN, who is formerly a supreme court justice of the State of Alabama, said:

> I would like to point out that the Highway Beautification Act is not an environmental issue, but it is one involving property rights. Clean air and clean water are not involved, nor are our national parks, national forests, or scenic highways. What is involved is the ability of a legitimate industry to do business in commercial and industrial areas where service stations, fast food chains, retail stores, and the like, are allowed to thrive.
>
> Just as important as a right to do business is a right to possess private property, without fear that the State or its subdivisions can confiscate it without payment of cash compensation.

On the same day, the next speaker was the former Secretary of Transportation, now a U.S. Senator, BROCK ADAMS. He said:

> This law mandates a method of compensation which is radically different from the one contained in current law. In the process, the amendment raises an issue which is fundamental to our concept of law, and in my view, violates a central American principle, which I supported when a number of us passed the original Lady Bird Johnson beautification bill, and that is to pay for property rights, not take property under the government's police power, local or otherwise.
>
> No matter what one thinks of billboards, they do involve a significant financial investment.

Nothing in this entire proposal of Senator CHAFEE's is fair. In the past 26 years, amortization language has been offered 14 times in Congress and rejected 14 times. One would think the brilliance of our Constitution and its protections would be enough to deter continuing assaults to one of our most basic and cherished freedoms.

Today, we are considering the 15th such effort. It is deja vu all over again.

Mr. President, I hope we are at the end of this overt attempt to trash the Constitution under the guise of environmentalism. If we are at an end, I am reminded of John Wycliffe's words 600 years ago, when he said:

> I believe that in the end the truth will conquer.

Mr. President, a vote in support of my amendment to strike will allow the truth to conquer.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I rise in opposition to the Reid amendment. Vermont and I have a long history on this particular issue. Vermont has banned billboards on all of its highways, off-premise billboards, for over 20 years.

My father was on the Supreme Court that wrote the decision stating that the State had the right to control highways, and therefore could ban billboards along the highways. I served as cochairman of the Vermont committee which ended up in banning all off-premise billboards in our State. I was attorney general and successfully defended the constitutionality of the amortization methodology utilized by the State of Vermont.

I think it is important to keep clear the issues here. First of all, as I mentioned first, is the right of the State or the Federal Government has the right to ban billboards. That is not the issue here. That is the policy issue.

So I want to make that clear that there is no debate on the issue of the authority of the State or the Federal Government to ban the use of billboards.

The question, however, stated, is as to whether or not the States, local governments, or the Federal Government, have the right to use, as a means of compensation, amortization, if we keep in mind that the value of the sign, obviously, is not the wood, nor the painting, nor the slogans on it; the value of the sign is in the ability to be able to reach the public utilizing the highway.

Thus, any system, practically, that went all the way from saying let us figure out what the value of the boards, and the writing, and whatever else is on the sign is, and to compensate, would probably reach a constitutional mandate.

Yet, the system that has been utilized takes into consideration that there is a value, and although that value can be removed and banned, a more logical and fairer approach would be to say to the sign owner: All right, we are going to ban them. But we will let you use the highways for your purposes of advertising over a reasonable length of time.

I do not think anyone would debate the fact that an owner of that sign receives compensation for the boards, the printing, and the value of the lights, or whatever it is, quickly, in a month or so.

But the reasonableness of the compensation we seek here for allowing the States to utilize the amortization system says: we will let you use the highways for your advertising purposes over a period of time, and get back much more value than the value of the product which we are ordering you to remove.

So I want to make sure that there is an understanding that we are not talking about a house, or something else, of which the value is obviously much greater; we are talking about allowing, for a limited length of time, someone to use the highway for advertising purposes, a privilege which can be banned.

A majority of the cases that have come before the courts have said that

amortization is a just means of compensation. The U.S. Supreme Court has refused to consider the issue, denying petitions of certiorari on numerous occasions.

President Bush, in his surface transportation amendments, proposes to change current law to allow amortization. The general counsel of the Department of Transportation, in a lengthy brief, supported its constitutional validity. The Comptroller General of the United States, in a May 17, 1991, letter to Senator CHAFEE, says that, having reviewed case histories, he concluded that the majority of the cases hold that billboard amortization is not violative of the U.S. Constitution.

The Congressional Research Service, the American Bar Association, and the Southern Environmental Law Association have concurred. On April 9, 1991, a U.S. Federal Appeals Court in Raleigh, NC, ruled in support of amortization.

For those who argue it is unconstitutional, I disagree and say there is no evidence to support that argument. A second provision does prohibit the use of new construction of billboards on the interstate right of way. Some may disagree with this policy, but this is a policy issue. As I pointed out, there is no constitutional issue. This is purely a policy issue.

I point out that in Vermont, having banned all off-premise signs, we find it has enhanced our ability to attract tourists, and it enhances the beauty of our State. We have utilized informational signs, which allow users of our highways to be able to locate and those things they want to see; yet, it does not make them look at things they do not want to see.

We believe that it certainly is a legitimate role in the States. Thus, I urge my colleagues to vote against the Reid amendment.

The provisions of the bill as presently before us are reasonable. They take care of compensation far beyond what is probably required in the Constitution with respect to the amortization provision. It does allow the policies of the States to go forward in a way which is reasonable and less costly than other options.

So I rise in defense of and argue in favor of States' rights here to utilize particularly the amortization methodology for the purposes of just compensation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first, I thank the distinguished Senator from Vermont very much for his cogent arguments in opposition to the amendment on the floor.

I know the Senator from Missouri has something he would like to proceed with. I yield to him.

The PRESIDING OFFICER. The Senator from Missouri, Mr. DANFORTH.

Mr. DANFORTH. Mr. President, I ask unanimous consent—and this has been cleared on both sides—to lay aside the pending amendment for no more than 10 minutes and that another amendment be in order.

The PRESIDING OFFICER. Is there objection?

Mr. CHAFEE. I wonder if we could do it in somewhat less than 10 minutes.

Mr. DANFORTH. 7 minutes.

Mr. CHAFEE. Do I hear 5?

Mr. DANFORTH. Mr. President, 5 minutes.

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada reserves the right to object.

Mr. REID. There is an amendment pending. I do not know anything about the amendment which is going to be offered. Could we go on to something else while on this matter?

Mr. DANFORTH. Mr. President, the amendment that would be offered should unanimous consent be granted—and it would take, let us say, 5 minutes to offer it—would be to incorporate into this bill three bills that have been reported out of the Commerce Committee relating to highway safety. The first has to do with drug and alcohol testing, the second is the National Highway Traffic Safety Administration reauthorization, and the third is the Motor Carrier Safety Assistance Program.

Mr. REID. Is this going to be accepted and not have a vote?

Mr. DANFORTH. I understand it will be accepted, and that is the reason I want to sandwich it in at this point.

The PRESIDING OFFICER. The pending request is by the Senator from Missouri.

Mr. MOYNIHAN. Mr. President, reserving the right to object, and I will not object, I have to say that we have not seen this. We will be happy to see it.

Mr. DANFORTH. That is not my understanding. I will withhold.

Mr. MOYNIHAN. Could we just have a ½-hour? I am very responsive, but I would want to know what it is.

Mr. DANFORTH. Of course.

The PRESIDING OFFICER. The Senator's request is withdrawn.

The Senator from Rhode Island [Mr. CHAFEE].

Mr. CHAFEE. Mr. President, section 137 was adopted in the committee by an overwhelming vote of 12 to 4. The committee I am referring to is the Environment and Public Works Committee. Voting for the amendment were Senators MITCHELL, MOYNIHAN, BAUCUS, LAUTENBERG, GRAHAM, LIEBERMAN, METZENBAUM, DURENBERGER, WARNER, JEFFORDS, SMITH, and myself. In addition, when this provision was introduced as a separate bill on March 7, the cosponsors were Senators BENTSEN, AKAKA, COHEN, JEFFORDS, LEAHY, METZENBAUM, PELL, and WIRTH.

Mr. President, the overall bill that this is part of takes major steps—we are talking now of the Surface Transportation Act—in giving States and localities responsibility and authority in a whole number of areas.

For example, we are going to trust the States in designing and building noninterstate highways and spending billions of dollars on those with little or no Federal oversight. But somehow the theory here in the Reid amendment is you cannot trust the States to regulate some nonconforming billboards, that this is a power we do not have to give the States. We are going to trust the States to enforce the speed limit and, indeed, we removed the Federal sanction that says they lose highway money if they do not enforce the speed limit.

We have to trust the States on Federal highways and federally supported highways to protect the lives of our citizens, where more than 45,000 people die every year. We leave that to the States. We do not have the Federal Government involved.

Somehow the theory is we cannot trust the States to regulate billboards. We have to sanction the States mandating that they are going to lose 10 percent of their highway money if they use the process that is known as amortization to remove nonconforming billboards. This is nonsense.

Let us just review the bidding. Up until 1978, States and localities were allowed to remove billboards through amortization, and, indeed, they still have the police power to remove other nonconforming entities. A massage parlor is no longer permitted under the zoning, under the police power; the State or the locality can remove that massage parlor through the use of amortization. The massage parlor is going to cost $10,000 and is making $2,000 a year. At the end of 5 years, under amortization, it is gone. There is no necessity to pay up-front money. You do not have to pay them $10,000.

But the billboard lobby successfully, in 1978, got a very unique provision inserted into the Highway Beautification Act. What did they get? They had a provision put in there that says that you cannot take down a nonconforming—what is nonconforming? It means it does not conform with the zoning laws. A nonconforming billboard cannot be taken down on interstate or primary roads without paying cash up front. Suddenly the States and localities were deprived of the powers they had always had of amortization, which I just described. That was taken from them. I must say, what a coup for the billboard industry. It does not apply to secondary roads, but they had them on primary and interstate highways.

The idea was that you had to give them up-front money. They said, there is a Federal law that the Federal Government will pay 75 percent. But the trouble is there are never any appropriations for the 75 percent. The Senator from Nevada says there are only a few of these nonconforming signs around. The facts are there are 98,350 nonconforming signs in the United States.

The suggestion is, by giving this amortization power which we are giving to the States, if they want to use it, they can use it; if they do not want to use it, they do not have to use it. There is the essence of States rights; we are giving the States the power. If they want to use it, they can use it. We are mandating that they use it. And we are changing that 1978 law that said they did not have this power; it is taken from them, the only instance that we know of where the police power of the States to use amortization was suddenly taken from them, solely for the protection of the billboard industry.

As I say, the States under this legislation, the bill—by the way, this is essentially the same language that is in the administration bill—says the States can use amortization if they want, they can use up-front, straight 100 percent payments if they want; that is their business.

Mr. President, I just want to review a red herring that is constantly drawn across this path, and that is that this is against the Constitution of the United States. The fifth amendment in the Constitution says there can be no taking of private property without just compensation. And the suggestion by the Senator from Nevada and others is that this is violative of the Constitution of the United States because there is not just compensation.

Let us look at that. Frankly, if it is against the Constitution, they do not have anything to worry about because it will not stand up. But the facts of the matter are that this has constantly been tested in State courts and in Federal courts and consistently the answer by the courts is that the amortization is in conformity with article V of the Constitution. In other words, when you use the process of amortization, it is not taking of property without just compensation. Amortization has consistently been found constitutional by the courts, not just for billboards, but for, as I mentioned before, a variety of other businesses. You can pay me now or pay me later. If the nonconforming billboard is worth $10,000, the States can pay them $10,000 now and the billboard comes down immediately and the State owns the billboard. Or the nonconforming billboard can be removed with amortization, which means the billboard stays up, for example, for 5 years during which the owner gets $2,000 a year in revenues and therefore will have the $10,000 payment after the 5-year period. After that time, the billboard has to be removed and the billboard owner gets to keep the billboard, haul it away. By that time all tax benefits have been realized since the IRS allows billboards to be fully depreciated over 5 years.

(Mr. KERREY assumed the chair.)

Mr. CHAFEE. Mr. President, let us review the bidding. What is this business that this is against the Constitution? All right, we have here a letter dated May 21, less than a month ago, of this year from the general counsel of the Department of Transportation. What does she say?

> In sum, this review of recent Federal and State law case law shows that little has changed since our review in 1986. As a matter of Federal law, amortization remains a constitutional way of extinguishing nonconforming land uses, including nonconforming billboards.

In other words, amortization is all right.

The Comptroller General of the United States, in a letter dated May 17 of this year, conducted an extensive analysis of the case law and the constitutionality of the use of amortization in the removal of billboards. This is what he said.

> Our review indicates that a vast majority of cases hold that billboard amortization is a reasonable exercise of the police power of a State and not violative of the Constitution.

In a letter dated May 6 of this year to me, Prof. Edward Ziegler, Jr., professor of law at the University of Denver College of Law and principal author for the revision of the treatise, "Rathkopf's the Law of Zoning and Planning"—he is the premier zoning lawyer in the United States—says the following:

"My opinion, based on decided"—decided meaning cases that have been decided—"decided Federal and State court decisions involving billboards and other types of inverse condemnation taking claims, is that there would seem to be no serious question regarding the 'taking' "—quotes around "taking," referring to the Constitution, the fifth amendment—"regarding the 'taking' constitutionality of billboard amortization programs on their face. Most court opinions on point area State court decisions and these courts overwhelmingly have rejected taking claims challenging the concept of billboard amortization. * * * Moreover, there is nothing in recent Supreme Court 'taking' cases inconsistent with the rulings of court decisions upholding the constitutionality of billboard amortization programs."

It seems to me, Mr. President, that thoroughly dismisses the points that are raised in the article, the op-ed piece in the Wall Street Journal, that the Senator from Nevada previously referred to. And I do not know whether he is going to stack up Mr. George Will as a constitutional expert against these experts that I have cited here.

Mr. President, in a letter dated May 7, 1991, to the chairman of the committee and myself, Mr. David E. Cardwell, chair, Section of Urban, State, and Local Government Law of the American Bar Association—he is not some columnist giving his views on constitutionality. He is from the American Bar Association—this is what he said:

> The position of the section of Urban, State, and Local Government Law is that the Highway Beautification Act of 1965, 23 U.S. Code Annotated, Section 131, should be amended to permit State and local jurisdictions to control billboards for safety and attractive communities by utilizing standard land use control procedures under traditional police powers by eliminating its present requirement that cash pavements be made to billboard operators upon removal of nonconforming signs.

The legislation before us, that is the Surface Transportation Act, puts a moratorium on new billboards on the interstate and primary highways. These roads are about 7 percent of all public roads and clearly those roads with the highest Federal responsibility and the highest Federal investment. Why do we need a moratorium?

New billboards are going up faster than nonconforming ones are being removed. We need time out for the States to determine how many billboards there are. States and localities need time to assess the situation, to catch their breaths, make decisions on the type of regulations they want to consider, and give local officials time to put new regulations in place, if they so desire, without pressure to put up new billboards.

I might say, Mr. President, there is tremendous pressure on local officials to put up new billboards. In our State, we had a large sign which literally grew up over night. When neighbors complained that the sign was in violation of regulations, the sign was ordered removed. Soon after that, a public service ad, which was offered to the city free, appeared on the sign. Now nearly 2 years later the sign is still there entangled in a legal dispute.

The all-American championship for fighting against removal of signs goes to North Dakota to a billboard company and owner out there. A sign owner in North Dakota asked the State to give him permission, interim permits, temporary permits to put up signs even though the State was in the process of passing legislation to comply with the Highway Beautification Act.

The sign owner finally convinced the State to give him these interim permits after agreeing to sign a statement stipulating he would remove the sign without compensation when the State ordered him to do it.

So the State said, "OK, you agreed. No problem. You will take it down, no

compensation. Do this when you are ordered to do it." Yes, he signed.

So in 1972, 19 years ago, the State ordered the signs removed. The owner refused to do so and has been in court ever since. This has gone on for 19 years tying up the State's time and resources in legal battles. The case has twice been to the Supreme Court of the State and once to the Supreme Court of the United States. And the signs are still there.

Now how is that for a championship, drag-your-feet winner?

So that is why we needed the moratorium. Billboards grow up during the night, and once they are there, you can count on protracted legal battles to remove them.

I might say Mr. President, the administration supports our efforts for a moratorium and to provide amortization and to include these bills. Lady Bird Johnson, Mrs. Lyndon Johnson, Laurance Rockefeller, others whose names are synonymous with preservation of the wonderful places in our country, have sent a telegram urging support for these reforms.

The Conference of Mayors and the League of Cities, who represent hundreds of cities around the country, are asking for these reforms so they can regulate billboards in their community in a way that will strengthen their local economy.

Mr. President, there is some suggestion that if you do not have these billboards or there is some control on them—and mind you conforming billboards are still there. This does not end the billboard industry. That is nonsense to suggest that.

There are currently, in the United States, between 400,000 and 500,000 total signs on the interstate and primary highways. Somehow the idea is going out here that we are wreaking havoc with the billboard industry. Why, they are all going to line up for unemployment compensation. They have between 400,000 and a half million signs along the interstate and primary highways, of which about 98,000, less than one-quarter, are nonconforming and could; they will not necessarily be, but they could.

We are giving the States some power. Anybody who belives in States rights ought to be for this bill 100 percent. I must say, I have great difficulty understanding the supporters of the amendment. Here is a power, a power of amortization, which can be used under every exercise of the police power except this nifty little niche that the billboard industry has carved out for themselves. What arrogance that they can say to the cities and towns and States, "No, no, no, you cannot use your formal police powers to get rid of these nonconforming billboards. This is a billboard that does not conform. You cannot use those powers because we are saying we have this big powerful lobby and we have this language in the 1978 law that says you cannot exercise your normal powers."

We trust other property to State and local Governments and laws under the amortization. Why not billboards? Why do we not have a sanction that prevents the States and cities from regulating these boards? Do we not have any confidence in the States to use the power just as they use it otherwise in the exercise of their police powers?

Well, Mr. President, I hope this amendment is thoroughly rejected, that we have confidence to give the States the powers they always had up until 1971. If they want to use them, fine. If they do not want to use them, that is their business. But let us not handcuff them as they have been.

This bill provides for over $100 billion to be expended on transportation; a good portion of that will be spent, 50 percent of it anyway, on primary and interstate roads—nearly all of it on the primary and interstates. Are the citizens of the United States of America not entitled to some rights under that? And where the local community has said this is nonconforming, the zoning does not permit a billboard, the local community and the State is entitled to get rid of it under the powers that they have for every other instance in the exercise of their police powers. I certainly hope my colleagues will reject the amendment. I thank the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. MOYNIHAN. Will the distinguished Senator from Washington yield for just a moment?

Mr. GORTON. I would be delighted.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. I wonder if I could ask the principals involved in this debate—and I declare my position, of course I support Senator CHAFEE and I am a cosponsor—would they have any interest in setting a time limit, to vote at a time certain? I do not in any way want to restrict anyone.

Mr. REID. Mr. President, if I can respond, there are a number of people in support of this amendment who wish to speak: The Senator from Louisiana, the Senator from Idaho, the Senator from Montana. I will have to respond.

Probably we will need another hour. I do not think we will use all that time.

Mr. MOYNIHAN. But you might.

Mr. REID. I think there are other people. Does that sound appropriate to the Senator from Louisiana?

Mr. BREAUX. Fine.

Mr. CHAFEE. Mr. President, may I respond to the distinguished floor manager, who has worked so hard on this? I have a problem in connection with a hearing in the Finance Committee that I attended earlier and am bound to return when a certain panel is there.

Mr. REID. I have the same problem.

Mr. CHAFEE. I am willing to move on. Frankly, I have said about as much as I am going to say. If we have other speakers on our side——

Mr. REID. Why do we not try to make it quicker than 1 hour.

Mr. CHAFEE. I think we can move along. When the panel comes up I have to go. The majority leader knew that when we scheduled this for today.

Mr. MOYNIHAN. I wonder if we could ask for an hour to be equally divided, and vote at 12:30?

Mr. CHAFEE. Mr. President, I would have to object.

Mr. MOYNIHAN. The Senator does not feel comfortable with that?

Mr. CHAFEE. I do not feel comfortable with a time agreement.

Mr. MOYNIHAN. Shall we indicate the probable time for a vote will be 12:30, so people will know that? I sense that is what is likely to happen.

Mr. REID. I am ready any time.

Mr. MOYNIHAN. We will proceed with our debate. I thank the Senator from Washington for letting me interrupt. I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I ask unanimous consent to set aside the amendment for 5 minutes to take up the amendment which was spoken of earlier by Senator DANFORTH, which I am doing on his behalf and which I believe has been cleared with the distinguished manager.

Mr. REID. Mr. President, I object. I have to go to Finance. We have to move this thing along. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Washington still has the floor.

Mr. GORTON. There having been an objection, I do not propose to speak at this point.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, I will try to be brief in my comments. This is an issue that has been around this Congress for many, many years; in fact, decades. It is a question of how we handle outdoor advertising along our interstate and Federal aid highways.

As in most cases it is not as some would have it, a clear-cut issue. It is not black or white. There are a lot of gray areas. There are some who would say there should be absolutely no billboards for information and advertising purposes located on any highway anywhere in the United States of America; that we should ban all billboards, we should cut the legs off the boards that are up now, and we should do away with every sign on every highway completely and totally.

On the other hand, there are others who would take the opposite extreme position, which would say billboards are private commerce, that there should be absolutely no restrictions on private enterprise, that someone

should have the right to build as many billboards in as many locations as they can possibly afford to pay for through the normal process of renting the property and building the structure. If they want to build them within 5 feet of each other up and down this country, go for it because that is private enterprise and should not be restricted whatsoever.

I take the position there is an answer somewhere between those two extremes and therefore support the Reid amendment to this legislation, which I think is a proper and appropriate way of handling this particular problem.

My own State of Louisiana has struggled with the question of billboards and regulations on a new section of interstate highways. The States already have the right to say no billboards on the highways within their boundaries, if they decide that is the proper policy for that State. There are many States that have taken that position.

I think the State of Hawaii, the State of Vermont, and others have taken that position: We do not want any billboards. We do not want any built and we do not allow them.

That is appropriate. That is proper for the State to take that action if that is what they think the people in their State want to have and it is in their interest.

My own State of Louisiana tried to take a compromise position, tried to balance it out. We tried to say, yes, we are going to regulate them. Yes, we are going to allow them. Yes, they do serve a public purpose. They are informative. They help commerce. They help the free enterprise system. They help the traveling public. But we should regulate them. We should not have them build anywhere and as often as someone thinks he wants to build them.

So I think the proper approach is not an outright ban or moratorium, as the legislation is in this particular bill. It is a total moratorium, a total ban on any new billboards on interstate highways. I think that is wrong. But I think it is appropriate and proper to have an in-between compromise position, which we have with the current law.

The second thing I would talk about is the legislation allowing the boards which were legally erected to be taken down and removed without paying anybody anything for them. I think that is wrong. I think that is a violation of the Constitution of the United States which requires that no private property shall be taken for public use without just compensation.

The committee came up with a novel idea, which is typical of many cases in Washington. We are not going to pay you any money. We are going to pay you amortization.

If anybody thinks he can take amortization and go cash it, or take amortization and put it in the bank, or take amortization and pay his bills with it, I want to let him know that is not possible. Indeed, I think it is a novel concept the committee has come up with, to take private property in this country and say we are not going to give you a check, we are not going to give you cash, we are not going to give you an IOU to pay you for it ever, we are just going to say it has been up, therefore it does not amount to anything, it is not worth anything: take it down.

I understand there has been some discussion on the floor between my friends from Nevada and Wyoming about this article in the Wall Street Journal by Gordon F. Crovitz. Mr. Crovitz is assistant editor to the editorial page of the Wall Street Journal and is a regular contributor to the Wall Street Journal.

Having said that, I think it is appropriate at this time to yield to the majority leader who I think is signaling me to yield to him.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I thank my colleague. A number of Senators have been calling me to inquire as to when the vote might occur on this. It has been my practice to try to set votes at a time certain to accommodate the schedules of as many Senators as possible.

Following discussions with the mergers and the principal proponents and opponents of this legislation, I now ask unanimous consent that there be 20 minutes remaining for debate on the Reid amendment No. 304, equally divided and controlled between Senators REID and CHAFEE; that no amendment to the amendment or to the language proposed to be stricken or a motion to recommit be in order; and that at the conclusion or yielding back of time, the Senate proceed to vote on or in relation to the amendment.

Mr. REID. Mr. President, reserving the right to object. I do not want to throw a monkey wrench into things, but if I could have 3 minutes because we have Senator BREAUX and Senator SYMMS wanting to speak. So can we have 3 minutes to my side?

Mr. MITCHELL. Would the Senator like 3 minutes on his time?

Mr. CHAFEE. We all spend time debating how fast we go. The panel I am interested in and the majority leader is interested in is starting at noon.

Mr. REID. You can go, and then come back and vote.

Mr. CHAFEE. I want to make sure I will be here to make sure everybody votes.

Mr. MITCHELL. Might I suggest, the panel, obviously, will not continue through the vote because the Senators in the hearing will have to come vote as well.

Mr. CHAFEE. With the assurance from the distinguished majority leader who is involved with the panel himself, I will be able to get there and still be here for the vote. That is putting you on the spot.

Mr. MITCHELL. I assure the Senator I will do my very best at that. As anyone who observes the Senate will be able to tell, my power to accomplish things is somewhat limited given the nature of that subject.

Mr. CHAFEE. Twenty minutes equally divided, 7 minutes here and 3 there, that makes 10, 20 minutes equally divided.

Mr. REID. It does not take a rocket scientist to figure out the noontime should work out just perfect. I need 3 minutes. It is not fair; Senator SYMMS has been here all morning, and Senator BREAUX has also been here.

Mr. CHAFEE. Senator BREAUX has finished, has he not?

Mr. BREAUX. I yielded to the majority leader.

Mr. MITCHELL. Mr. President, I amend my request to ask there be 23 minutes for debate, 13 minutes under the control of Senator REID, and 10 minutes under the control of Senator CHAFEE.

Mr. CHAFEE. Who says I am not a good fellow?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I thank my colleagues for their cooperation.

The PRESIDING OFFICER. Who yields time?

Mr. REID. The Senator from Louisiana is given 4 minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, let me conclude with the fact that I think the amendment of the Senator from Nevada is essential. Amortization does not pay anybody anything for taking of private property.

The article in the journal pointed out a good point that under this amortization-type theory, a city could announce there could be no building taller than 10 stories within their cities' limits, and then announce owners will be compensated by allowing them to occupy the buildings for 5 years and then leveling the buildings. That is what amortization is all about.

Are we in this Congress going to extend that concept of the taking of private property when we have a better way of regulating outdoor advertising on Federal aid highways? The system is currently working, I would argue. There are States, as I mentioned, that have no billboards. They made that decision and its is totally appropriate.

My own State of Louisiana has taken the position of compromise in regulating billboards which I think is totally appropriate, regulating them as to where they can be located, how close to an interstate highway, and what areas,

how many they can have in a particular area. That is the proper approach.

As I said in the beginning, there are those who want no boards whatsoever, and there are those who want unlimited boards anywhere anyone wants to put them.

I suggest this Congress and this Senate reject both of those propositions and vote in favor of a balanced compromise which allows for a legitimate regulation. And if we decide to take down boards that were legally erected under previous regimes that, yes, indeed, compensation in this country, in America should be paid for the seizure of private property and a scheme by which we can say we are doing that by amortizing is indeed not in the American spirit and I think contrary to the dictates of the U.S. Constitution.

Therefore, I think we should all support the Reid amendment, and I yield back my time to my manager.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, how much time remains?

The PRESIDING OFFICER. Ten minutes forty-five seconds.

Mr. REID. I yield 6 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Sentor from Idaho.

Mr. SYMMS. Mr. President, I rise in support of Senator REID'S motion to strike section 137 of the Visual Pollution Control Act which was adopted during the committee markup. I always viewed that if somebody has something to sell, it is nice they can put a sign up and let people know where it is. That is basically what free enterprise is all about.

As Senator DOLE. said in this Chamber a few years ago when this issue was debated, "I come from a small town in Kansas. It is a great little town, but it is a good thing we have a sign to show people where it is or they would never find it."

So I think for us to look at this, and as far as this compensation issue with respect to amortization, I find it incredible that somone says that you have a sign and let you use it for 5 more years and then take a chainsaw to it, somehow that is paying you for it; I cannot quite understand that.

I know oftentimes people will face editorials that will tell them that somehow this is a good position for us to be in, to take down all the signs. But we have to remember that the same newspapers that write those editorials have a big advertising department and it is competition with them to have signs. There is also that aspect for us to think about.

But I joined with Senators REID, SIMPSON, and BURDICK in voting against this amendment when it was offered in the committee. Obviously, I hope the full Senate will support the Reid position.

It is not a new issue, so I will keep my remarks very brief, in fact, briefer than I would like to. But both the proponents and the opponents of this amendment focus on a single aspect of the complex revision of the Highway Beautification Act of 1965; namely, the elimination of provisions in existing law that require States to pay cash compensation for removal of noncoforming signs.

I want to point out that a variety of new requirements in this amendment would be imposed on States with a threatened loss of highway funds if the States fail to enact conforming legislation.

First, cash compensation. By repealing current law, Senator CHAFEE'S amendment would allow State and local government to amortize the value of nonconforming billboards to take it down, pursuant to Federal law, without paying the owner a single dime. That is really what we are talking about. This is often touted as States rights, but it is anything but States rights. The Visual Pollution Control Act is not a States rights proposal. If Members want to give back the States rights to regulate billboards, we ought to just repeal the Highway Beautification Act of 1965.

The fact is, if Senator REID is not successful in his vote, I am toying with the idea to offer that amendment so we will give it back to the States if that is what the proponents want. Let us give them the authority to control the billboards. The Visual Pollution Control Act is the antibillboard crowds attempt to have their cake and eat it too. They are not proposing to leave each of the States free to regulate billboards as they see fit. In fact, the Visual Pollution Control Act would substantially tighten Federal control of billboards. At the same time, it would allow State and local government to remove signs more easily by repealing the requirement that cash be paid to the owner whose property the city or State is taking.

My State happens to be in conformance with the National Beautification Act. They have paid people, they have taken down the nonconforming signs. What is happening here, Mr. President, is the proponents of section 137 of this bill want to give back the rights only to State and local governments that they want to take the signs down.

I believe the Federal Government is going to regulate billboards on highways across the country, and the Congress has a responsibility to see that private property rights are guaranteed in the fifth amendment, as they are in the fifth amendment. They are guaranteed and we protect by requiring cash compensation for the removal of nonconforming billboards. If those who find billboards offensive believe they will be better without Federal regulation and strict adherence to the fifth amendment, then an amendment to repeal the Highway Beautification Act might be logical and justifiable for this position.

Let me mention a few of the finer points of this. Enactment of the Visual Pollution Control Act would require nearly every State to make substantial statutory modifications to tighter controls. States failing to enact these modifications would face up to a loss of 5 percent of their surface transportation program.

So Senators need to be aware of that. That is in this section.

The act requires States to prohibit the erection of any new billboards along the interstate and primary highways, prohibit any modification or maintenance of conforming signs that may extend the useful life of a sign, prohibit the cutting of trees and vegetation to improve and maintain visibility of signs.

It is important to note that nothing in current law prevents States from enacting these billboard control measures. In fact, several States have gone even further by banning billboards entirely.

But the proponents of the Visual Pollution Control Act want to force the rest of the States to enact billboard controls they have not chosen and perhaps would not choose or enact on their own. So this will be a matter of mandating to the States what they have to do.

So I hope my colleagues will support the position of the Senator from Nevada to strike the Visual Pollution Control Act from the bill.

I want to reiterate, from my point of view, and with all due respect to my colleagues who have spoken on the other side of this issue, this is not, in my opinion, a States rights proposition.

In fact, as I have said, if Senator REID'S motion is unsuccessful, then I believe those of us on the side of Senator REID should consider offering an amendment which would truly return this regulation of billboards to the States. I think Senators, in voting for this, should be prepared, if Senator REID is unsuccessful, may get an opportunity to really demonstrate their love for States rights if we offer an amendment just to strike the entire section of the law which would then put it in conformance with States rights and get the big powerful hand of the Federal Government out of the issue.

Mr. President, I thank the Senator from Nevada for his efforts on this issue.

I yield the floor.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be deducted equally.

Mr. REID. Does the Senator from Rhode Island care to yield back the remainder of the time?

Mr. CHAFEE. No. I have, as I understand it, 10 minutes. I would like to reserve that time. If the Senator wants to proceed, he may have more time than I do.

The PRESIDING OFFICER. The Senator from Nevada has 3 minutes and 54 seconds; the Senator from Rhode Island has 10 minutes.

Mr. CHAFEE. I may not use all my time. I will save it for the end.

The PRESIDING OFFICER. Time will be deducted from both sides.

Mr. REID. Mr. President, as a lawyer, I learned a long time ago in my first few cases that, if you are in trouble with the facts, you argue the law. Basically, that is what we have here.

What we heard from the Senator from Rhode Island to maintain this in the bill is that the law supports his position. Of course, we know that is not the case. I cited cases from Colorado, Pennsylvania, and read the language from those cases supporting the position to strike this.

What this deals with, of course, is the fifth amendment of the U.S. Constitution.

There is also no question about the fact that the number of billboards since 1966 has gone down significantly, from 6.6 for every 2 miles, to about 1 for every 2 miles of roadway.

There is no way the Senator from Rhode Island or anyone speaking in favor of the language now in the bill addressed what I feel are some extremely fallacious points in the language now in the bill. What about material in the signs? Is it fair that you not only have to tear the signs down but you cannot use them to build another billboard, even if it is a legal one?

What about the law as it relates to the foliage?

There has been some argument given about all those that support the position of the Senator from Rhode Island. In fact, I heard the administration—the Comptroller General—that is unique—now he is being cited as a legal authority. And in the same breath he says this very powerful billboard industry. I do not think anyone would compare them to the administration, the Comptroller General, and the American Bar Association, who has never seen a law they did not like because it creates more work for lawyers.

So, Mr. President, I submit we are dealing here with the fundamental principle for the American system of justice that I would summarize by again quoting Judge HEFLIN, who I think is the person we all look to for legal authority in this Chamber.

Just as important as the right to do business is the right to possess private property without fear the State or the subdivision can confiscate it without payment of cash compensation.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? Time will be charged equally to both sides.

The Senator from Nevada has 54 seconds; the Senator from Rhode Island has 9 minutes and 30 seconds.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. How much time do I have?

The PRESIDING OFFICER. The Senator from Rhode Island has 8 minutes and 30 seconds.

The time of the Senator from Nevada has expired.

Mr. CHAFEE. Mr. President, I would like to briefly sum up what the situation here is. Under the language in the bill before us, the legislation, the States are not required to take down any sign. They are not required to use amortization. They are not required to do anything. They are not required to invoke anything.

What the Senator from Nevada wishes is to go back to the law as it currently exists which changed the processes that have always been in effect before 1978, and deprive the States of the power to use amortization in the exercise of the police power, a power the States have in the exercise of their police power against all other conditions except billboards on interstate highways and on primary roads.

That is what the billboard lobby so successfully inserted in, ironically, the Highway Beautification Act of 1978. They deprived the States and the communities of a power they had always previously had, and they want to keep it. Who blames it? What a wonderful thing they achieved for themselves. It did not do much for the public, and it certainly hamstrung the local governments.

But for the billboard industry, it is a marvel that in any nonconforming area they have in mind, the billboard is not permitted there in the first place but they have to be paid up front with dollars. How many communities now under the strapped conditions they are in have the dollars to pay up front money to take down the sign instead of using the power they have for every other possibility under the police power, namely the use of amortization.

That is the first point. The suggestion is that we do not want to get the heavy hand of Federal Government in here. The ultimate of the heavy hand of the Federal Government is the law as it currently exists, which interferes with the rights in the communities. That is the Federal Government interfering. I say, let us go back and give the powers to the States, as they previously had before 1978.

Second, the suggestion is that all billboards are going to be taken down under this, and no one will know how to get to this town or that town. That is just not so. No one is suggesting that conforming billboards have to come down. And, mind you, there are between 300,000 and 400,000 of those in the country along primary and interstate highways.

As everyone knows, in those States—for instance, Vermont—which have chosen to outlaw all billboards, they can put up informational signs directing overnight lodging, gasoline, food, or whatever it is.

So the suggestion is that the poor traveler is going to be wandering out on the highways not knowing what is where, and that is just not so.

Mr. President, for these reasons, I hope that my colleagues will join with me and others in voting against the Reid amendment.

Mr. President, I understand there is no time left on that side. I am prepared to yield the remainder of my time.

Mr. SPECTER. Mr. President, I support the amendment by Senator REID to strike the antibillboard provision from the committee bill because the provision does not provide fair compensation for the property which it takes.

Highway beautification is a matter that I believe deserves consideration as a major national issue, while ensuring just compensation for billboard removal when removal is necessary. I concur with the proposal in the bill to allow the States and local governments to prevent the construction of additional signs, and to order the removal of signs which detract from natural beauty. The proposal in the bill, however, would be unfair because it would not guarantee payment of fair market value to a sign owner who is required to remove a sign.

The fifth amendment of the U.S. Constitution guarantees just compensation when the Government takes private property on behalf of the public good. Therefore, when property is taken under eminent domain, clear-cut just compensation and due process provisions guarantee that the owner receives fair market value for the property. The amortization plan provided in the bill does not treat the removal of a billboard in such a manner. As a result, if a billboard owner who is ordered to remove a sign and is required to accept an amortization plan, that individual might never actually receive the fair market value of his property. Even after amortization for tax and other subjective criteria, property still maintains its value, and fair compensation should be provided.

The Commonwealth of Pennsylvania is one of 35 States with a law on the books requiring the payment of cash

compensation to the billboard owner when a billboard is removed by the State or locality. In addition, Pennsylvania courts for many years have taken the position that provisions for the amortization of nonconforming billboards are invalid under the State constitution.

For these reasons, I oppose the provision in the committee's bill and support the amendment offered by my colleague from Nevada. I am hopeful that billboard control without departing from the principles of just compensation can be achieved.

Mr. BRYAN. Mr. President, I rise today in support of the amendment offered by the senior Senator from Nevada.

As many others have pointed out throughout the years, the issue now before us is simply one of fairness. Since 1965, when Congress first passed the Highway Beautification Act, owners of legal, but nonconforming, billboards have received just compensation in the form of a cash payment for the taking of a sign in compliance with State law.

I can understand the problems caused by the just compenstion requirement. There is no doubt that it increased the cost of removing nonconforming billboards. Allowing amortizaton would reduce the cost of removing nonconforming billboards. The fact remains, however, that these billboards are private property, legally erected at a cost to private citizens. When someone owns a home that needs to be torn down to build a highway, the Federal Government does not amortize the home, it pays just compensation. Under the fifth amendment, I cannot see how we can do anything less for the owners of nonconforming billboards.

I think this issue is confused a bit by the terminology involved. There is an important distinction between nonconforming billboards and illegal billboards. While illegal billboards are erected illegally, and thus can be removed without any compensation to the owner, nonconforming billboards were erected legally, but do not conform to subsequent changes in the law. The removal of illegal billboards has been very successful—the U.S. Department of Transportation reports that as of September 30, 1990, more than 650,000 illegal signs have been removed. This represents 95 percent of the illegal signs erected across the Nation. The issue of removing nonconforming signs should not be confused with the equally, if not more, important issue of removing illegal signs, an effort which has been very successful.

Governments at every level make decisions based on the best interests of their constituents. Often, however, these decisions have costs. Private citizens who are adversely affected by decisions in the public interest must be compensated. As a State or local government considers proposals to eliminate or restrict the use of billboards, the cost of reimbursement to the owners of existing billboards should be factored in. As the experience of States like Maine demonstrates, such programs can be successful. The use of amortization as a substitute for such settlement ignores the fundamental constitutional protection against the seizure of private property.

In addition to the provision allowing amortization of nonconforming billboards, several other provisions of the proposed legislation concern me. In addition, the prohibition against improvements on nonconforming billboards is itself a form of the taking of private property, if the Government cannot require the billboard owner to remove the billboard, it follows that the Government should not require the billboard to fall into a state of disrepair. Even if a sign is nonconformig, it is still private property, and the owner should retain the rights of all property owners.

Mr. President, I urge my colleagues to vote in favor of the amendment to strike the outdoor advertising provisions of S. 1204.

Mr. FORD. Mr. President, when the Federal Aid Highway Act was before the Senate roughly 5 years ago, I spoke against the billboard language which was in that bill. Let me repeat what I said then: I am not opposed to the regulation of billboards, I am not opposed to enforcement of the Highway Beautification Act. What I am against is language that prohibits the construction of new billboards along the Nation's highways, language that would effectively wipe out thousands of small businesses in America.

Language in S. 1204, the Surface Transportation Efficiency Act which is before us today, is no different than that which was defeated on a floor vote last time around, and it has the same ultimate and devastating effect—it will force out of business companies that make billboards and will cause irreparable damage to the thousands of towns and legitimate businesses across the country that depend on them.

Mr. President, I am not talking about the giant companies which own roughly 80 percent of all existing billboards; I am talking about just plain folks, about small, family-run enterprises that are the true embodiment of the American way.

Let me give you a few examples of the kind of operation you will be closing down if you vote to keep the Chafee language in the bill. One that is in my part of Kentucky is a modest three-man business. The father operates the telephone, taking orders and generating clients; one son designs the billboards; and the other goes out and actually builds them and puts up the paper—an efficiently run operation if there ever were one: a father and his two sons.

A second example is that of a man and wife team who started out in 1958 with $50 to put up their first billboard. Today that company is a multimillion-dollar operation employing 11 people and owning 400 billboards.

Then there are the advertisers themselves, such as the small chain of family restaurants adjacent to the Illinois Turnpike whose sole source of advertising is, quite simply, billboards. Without these signs, they would have to close down and would not be in business tomorrow.

Americans like billboards. Tourists, business and even municipalities depend heavily on outdoor advertising. Why the State of Maine, which has banned billboards within its own borders, has been known to purchase billboards in Massachusetts advertising the beauty of its fall foliage. And how else is a stranger driving in unfamiliar territory supposed to know about restaurants, gas stations, hotels, and campgrounds if there isn't a sign indicating the existence of such services? As Senator DOLE pointed out during the Senate's last debate on the subject, some of the smaller towns in Kansas would just disappear if there were no billboards. I wager that would happen somewhere in every State in the Union.

I wonder what happened to the initiative of the city of New York of a few years ago, an initiative designed to generate millions of dollars in new revenue. Talk about the widespread utility and use of billboards. The city solicited bids from outdoor advertising companies to lease over 120 city-owned properties for the exclusive right to install and display outdoor advertising on approved surplus, city-owned properties. I wonder how much the coffers of the largest city in New York have profited from outdoor advertising?

I have been working closely with small billboard operators over the years and I can categorically say that they are in favor of stronger regulation of the billboard industry. They are in favor of strict enforcement of the Highway Beautification Act and would even agree to a Federal permitting scheme to generate funds for illegal sign removal.

All I am trying to do here is convey the message: Regulate but don't punish. Don't punish these small businesses, operators as well as their clients. There are many other fairer alternatives to banning the construction of billboards. I would strongly suggest that, before the U.S. Senate goes on record against small businesses, it first thoroughly examine the issue and the potential economic repercussions of the Chafee language.

I urge my colleagues to support the motion to strike.

Mr. SIMPSON. Mr. President, we have seen this bill before. The Senate has voted on this matter before and we have repeatedly defeated the effort to

allow the removal of billboards without just compensation.

This is a difficult issue—it is one that seems to touch off an emotional response all across the country.

I certainly appreciate the desires of Senator CHAFEE and others to satisfy their constituencies in heavily urbanized States who do not want to look at cluttered billboards. Current law allows your States to pay the owners for the sign and then to take them down.

But in the open West it is a different story. Billboards are a very valuable advertising tool—for businesses and communities. Billboards are an investment. Not only a fiscal investment, but an investment in that community and attracting traffic off of the interstates and into some of our smaller communities. It is inappropriate to amortize these billboards as a means of compensation. No money is ever paid for the removal of the signs and it is just a clever way to eventually force the billboards out of existence.

The cash payment program has worked well. If it is important enough for someone to remove the billboard—he pays the cash. But if it is not important enough to merit spending the money, then we should not be changing the law to permit the removal of the signs at less of a cost.

Senator REID appropriately addressed the issue of States rights. It is a States right to decide how its highways will look and if billboards are allowed or not. And if a State decides not, then it needs to come up with the money to buy the billboards and take them down. How a State looks, how it promotes its tourism and helps its communities, is a State decision. Some want open vistas, some want the billboards. Let us let them decide, but let us not pass Federal legislation banning the construction of new billboards along interstates and allowing some fancy bookwork called amortization to remove those that already exist. It is heavy-handed Federal lawmaking, it supercedes a States' responsibility, and it's not only unfair but very questionable in its legality against the billboard owner.

Mr. HEFLIN. Mr. President, I would like to point out that the Highway Beautification Act is not an environmental issue, but it is one involving property rights.

Clean air and clean water are not involved, nor are our national parks, national forests, or scenic highways. What is involved is the ability of a legitimate industry to do business in commercial and industrial areas, where service stations, fast-food chains, retail stores, and the like are allowed to thrive.

Just as important as the right to do business is the right to possess private property, without fear that the State or its subdivisions can confiscate it without payment of cash compensation.

Police power removal of signs through amortization has not reared its ugly head in Alabama until the last few years, when it appeared in a Tuscaloosa ordinance. Birmingham now has such an ordinance under consideration. I do not want to see this perfectly legitimate industry decimated by amortization.

Mr. President, this amendment would jeopardize that right to private property and I hope my colleagues would reject this amendment

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nevada.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The PRESIDING OFFICER (Mr. WELLSTONE). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 90 Leg.]

YEAS—60

Adams	Dole	Mack
Bingaman	Domenici	Mikulski
Bond	Exon	Murkowski
Boren	Ford	Nickles
Breaux	Fowler	Nunn
Brown	Garn	Packwood
Bryan	Gore	Pressler
Bumpers	Gramm	Reid
Burdick	Grassley	Riegle
Burns	Hatch	Sanford
Byrd	Heflin	Sasser
Coats	Helms	Shelby
Cochran	Inouye	Simon
Conrad	Johnston	Simpson
Craig	Kassebaum	Specter
Cranston	Kasten	Stevens
D'Amato	Kohl	Symms
Daschle	Levin	Thurmond
DeConcini	Lott	Wallop
Dixon	Lugar	Wellstone

NAYS—39

Akaka	Harkin	Mitchell
Baucus	Hatfield	Moynihan
Bentsen	Hollings	Pell
Biden	Jeffords	Robb
Bradley	Kennedy	Rockefeller
Chafee	Kerrey	Roth
Cohen	Kerry	Rudman
Danforth	Lautenberg	Sarbanes
Dodd	Leahy	Seymour
Durenberger	Lieberman	Smith
Glenn	McCain	Warner
Gorton	McConnell	Wirth
Graham	Metzenbaum	Wofford

NOT VOTING—1

Pryor

So the amendment (No. 304) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, may we have order in the Senate.

The PRESIDING OFFICER. The Senate will come to order.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the pending Byrd amendment be temporarily laid aside for the consideration of an amendment by my distinguished partner in this enterprise, the Senator from Idaho [Mr. SYMMS].

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I know many Senators are wondering what the schedule is going to be here.

The PRESIDING OFFICER. The Senate will be in order.

Mr. SYMMS. Mr. President, I have just been informed that the distinguished chairman of the Finance Committee wishes to make a speech right now.

I might just say that I have an amendment that I will be offering on behalf of Senator BOREN and myself immediately following the speech of my chairman. I might also say, Mr. President, that the amendment I will be offering on behalf of myself and Senator BOREN is otherwise known as Senate bill 50, which has 40 bipartisan cosponsors. As of June 12, 40 of the Members of the Senate are sponsors of this legislation.

This legislation deals with the taking regulations of the law, the Private Property Rights Act it is called. The amendment that I will be offering has the full support of the administration. In fact, the Vice President called me this morning and the administration would like to have it amended on the highway bill.

I do not know how controversial it will be or how much debate will be required, but I would just like to advise my colleagues that I have agreed with the members of the Commerce Committee that during the debate of the Private Property Rights Act we would yield the floor to the Commerce Committee for 5 minutes while they put their section in this bill that has been cleared on both sides of the aisle. That is kind of the schedule for now.

I anticipate that we would have a record vote on the Private Property Rights Act, although if the committee chooses to accept the amendment, those sponsors I am sure would agree with me that we would not push the Senate to a record vote.

So, with the understanding that I first be recognized when the Senator from Texas has completed, for the purposes of offering an amendment, I will then be glad to yield the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I seek recognition.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I thank my good friend from Idaho.

Mr. MOYNIHAN. Mr. President, if the Senator would be kind enough, may I ask now, Mr. President, this is the fourth time in 15 minutes that we had to respectfully interrupt the proceedings, but the Senate is not in order and we are going to hear an important speech.

The PRESIDING OFFICER. The Senate will be in order.

If Senators have discussions, they should take them off the floor. The Senate will be in order.

The Senator from Texas is recognized.

Mr. BENTSEN. Thank you, Mr. President. I thank again my good friend, the distinguished Senator from New York, the manager of this piece of legislation.

It is a major change in the way to approach some of the problems that face transportation in this country. I note that it is entitled the Surface Transportation Efficiency Act. It urges upon us a major departure, a major departure from previous Federal policies. It is designed to introduce into our surface transportation ideas of cost efficiency and productivity.

Yet, when I look at S. 1204, when I look at the funding formulas, and the major factors effecting the distribution of highway funds in the 1990s, what do they do? They go back to an archaic formula, for example, postal routes. Now that was first brought into the equation in 1916. I do not think the committee has brought the funding provisions face to face with the modern problems of growth and what has happened to the transportation system.

S. 1204 incorporates another anomaly which I think weakens my friend's stated objective of bringing efficiency and productivity to the surface transportation system of this country. Current law would require the use of the 1990 census data in making funding allocations after the 1990 data becomes available later this year. But S. 1204 works the other way. It says during that entire 5-year authorization period, what you would be using is the 1980 census data; completely ignoring what has happened to the population of this country over the last decade.

This unexplained change in current funding mechanisms would extend a flaw in the current funding formulas: These formulas fail to consider and accommodate the demand for transportation services and products of fast-growth States. This flaw in our highway funding mechanism ought to be recognized by our friends and colleagues who crafted this piece of legislation. It has now been over 5 years since the General Accounting Office released its report identifying the inefficiencies inherent in the outdated formulas and recommending their replacement with formulas that more closely reflect the extent of these highway systems, their present use, and their increases in usage.

Implicit in the General Accounting Office's recommendation is the conclusion that current funding formulas lead to irrational, inefficient outcomes in the allocation of highway funds amongst the States. By retaining those archaic formulas, the bill before us, with respect to that portion of the legislation, most be judged to have failed. These formulas do not accomplish the objectives stated in the title of S. 1204.

This legislation must be judged to have failed by other standards as well. Last Thursday, in his introductory remarks beginning this debate, my friend from New York reviewed the early history of the highway trust fund and the Interstate System which it supports. In those comments my friend described how the funding of the long ribbons of asphalt and concrete extended westward relied upon a large transfer of revenues out of the Northeastern States into the South and into the West.

I have long recognized my friend's scholarship, and I recognize it on this one. But, I must say, I do not think it has been brought up to date. I have no doubt but that his description is correct during an early period in the construction of the Interstate System. But, Mr. President, matters are different today, and they have been different for many, many years.

Figures from the Federal Highway Administration show that, clearly, over the full history of the highway trust fund since 1956, the net flow of highway dollars has been precisely in the opposite direction, from Southern and Western States into the Northeast. And this flow of revenues has been massive.

I share the frustration expressed by several of my colleagues in finding consistent facts and numbers, so we know we are comparing apples to apples, oranges to oranges, because we have had so many differing figures. So, in order to avoid a confusing debate over whose numbers are better, I have conceded the question and I have chosen to rely on the same source that the Senator from New York used last Thursday in his discussions of each State's return on investment from the highway trust fund, cumulative for the years 1956 to 1989, except that I have obtained from the Federal Highway Administration an updated version of that table, which includes fiscal year 1990 as well.

Between 1956 and 1990, 6 Southern and Western States—only 6—have accounted for fully two-thirds of the entire net transfer of highway revenues among the States. Other States, largely in the Midwest and in the South, also saw a net outflow of highway revenues since 1956. But I will focus mainly on the 6 Southern and Western States that account for two-thirds of the entire transfer of revenues since 1956. These six States: Texas, California, Florida, North Carolina, South Carolina, and Oklahoma, paid almost $7 billion more into the highway trust fund than they received out of that fund.

Taxpayers in the State of Texas contributed almost one-third of that $7 billion, more than any other State. And I must say it would have been far more if the Senator from Texas, in 1982, had not prevailed in putting an 85-percent floor as to what must come back as compared to what was sent to the highway trust fund.

Of that $7 billion, what we have to also realize is it reflects none of the inflation that has taken place over the last 35 years. If we crank that in, then we would be talking about an enormous additional amount of money.

Which States received the benefit of this massive transfer of highway revenue? Many did, among them the States of New York, Connecticut, Massachusetts, Rhode Island, and Vermont. Since 1956, these five States have received $6.9 billion more from the trust fund than they paid into the fund, nearly matching the $7 billion outflow from the 6 Western and Southern States I have identified. Again, that is in nominal dollars, not converted into today's dollars.

There is no question in my mind which direction the revenues have flowed over the history of the highway trust fund. They have defied gravity. They flowed upward, North and East.

But that is all history, Mr. President. The central question, properly before us, is how these trust funds are to be allocated over the next 5 years under the provision of the bill now before us. I do not deny there would be changes in the proposed structure of S. 1204. Indeed there will be a few winners; States such as Maine would be transformed from a donor to a donee State. There would also be a few new losers, such as Alabama, Illinois, and Louisiana; States that were previously donee States and would become donor States.

But there is also a lot that does not change under the bill. For example, for the same five Northeastern States that drew $6.9 billion more from the trust fund than they paid into it in the first 35 years of this fund—States that are among the richest in the Nation, with the highest per capita income—S. 1204 would add another windfall of $5 billion over the next 5 years.

Remember—I heard my friend say, which state, 350 miles across——

Mr. MOYNIHAN. Wyoming. I said God made Wyoming.

Mr. BENTSEN. I agree that there are always going to be donee States, and I think there should be. You make a very valid point about Wyoming, and about Montana, Nebraska, States that have substantial territory but very few taxpayers to pay that gasoline tax. How are we going to have an Interstate

System? Even if it is already virtually completed we have to maintain it, and, therefore, there are going to be those donee States. But the logic does not follow when we are talking about a State that has high population in relation to its geographic area and has high income per capita, and then remain a perpetual donee State.

There is a basic inequity there that has to be corrected. I do not know that we have the votes. I understand how one could artfully put together a coalition where there are more winners than there are losers. And I understand the propensity of us to all look after our own particular States when it comes to the disbursement of Federal revenues. We all want to be sure we get a large share for our constituents.

But at some point the question of equity has to come in. If we are going to have the continued support to put through a highway program, we have to give some consideration to a formula that is basically out of date and that has to be corrected.

During the next 5 years $2.7 billion will be required from the States of Texas, California, Florida, North Carolina, South Carolina, and Oklahoma in order to fund the revenue transfers to those six Northeastern States. Moreover, another $2.3 billion in revenues from the States of Alabama, Arkansas, Georgia, Louisiana, Illinois, Indiana, Kentucky, Michigan, Mississippi, Tennessee, and Virginia, would be required to complete the funding of this $5 billion transfer to these Northeastern States.

Mr. President, as one might expect, four of those five Northeastern States are very ably represented on the committee of jurisdiction. Is there any mystery why they have retained the old funding formula? We would expect nothing less from our friends and colleagues than to promote the interests and the welfare of their own States in the consideration of such important legislation. I understand.

But at some point enough is enough. The funding formulas on which the proposed allocation of revenues is dependent has no legitimacy. They fail all standards of reasonableness and equity. Quite frankly, Mr. President, they are rigged.

I recognize the fact, again, that we are going to have donor and donee States. But there has to be some change in the formulas we have today, because many of these States that are now heavy on the donee side cannot be considered rural States. They are urbanized, industrialized, wealthy States.

The legacy of inequity in highway funding lies at the core of the debate in which we are now engaged. There are some who seek to dismiss those who oppose the funding formulas of S. 1204 by claiming we simply seek for our own States the advantage which others would win if S. 1204 prevails.

They assume, and would have you believe, that all claims to these moneys are equivalent, that we have no means of judging one claim over another, that we are each simply "bringing home the bacon," nothing more, nothing less.

But Mr. President, that is wrong. At some point there has to be a limitation.

There is a standard of equity—that is what we are discussing today—and many of us have opposed these archaic formulas for quite some time. Many of us who oppose this bill represent taxpayers who have carried far more than their fair share of the highway funding burden over the past four decades, despite the fact we are fast-growth States with greater needs for transportation improvements.

Mr. President, there are some who defend S. 1204 by merely dismissing the issue at hand as one of dollars: who gets them, and who does not. It is far more than that, Mr. President. The insight reflected in this legislation is the clear recognition of the central role of transportation in American life today. Henry Ford's extraordinary invention and the realization of President Eisenhower's dream of a comprehensive network of interstate highways has torn us apart, as the Senator from New York's article in the Reporter back in 1960 so accurately described, and yet simultaneously has bound us together in entirely new ways. My colleague cannot be more right in that.

But today what we are debating is more than the allocation of Federal highway funds. Really, we are determining the quality of life for millions of Americans—the time they spend on congested urban freeways instead of at home with their families. I experienced that as late as last evening as I found myself in a gridlock on the George Washington Parkway for 45 minutes because of a stalled car and a policeman who thought he was trying to help.

We are determining the environmental quality of many of our cities: which ones are going to meet the rigorous air quality standards of the Clean Air Act and which will not. We are allocating opportunities for economic development and employment growth—which cites and States will have the transportation infrastructures that are adequate to accommodate the demands of new and growing businesses and which ones will not.

Indeed, while we may prefer not to view the matter quite so clearly, nevertheless, in allocating the funds which will be adequate, or not, to resurface the deteriorating roads in each of our States, replace one bridge but not another, improve one railroad crossing but not another, widen one stretch of two-lane road to four lanes but not to widen another, we are allocating the risk to life and limb among the citizenry of our various States. We are not simply dividing the pork.

Mr. President, this legislation is ambitious and has many good things in it. I just voted with my distinguished friend on the last amendment. I think he is absolutely right in what he is trying to do with the billboards. I have that problem in my own State. Drive into Houston and take a look. It is one billboard after another.

I used to be on the other side of that argument. I used to be on the billboard side, because of the argument of compensation and whether you are really taking property without compensation. And then I finally realized you are never really going to get them down that way, and so you have to amortize it. Give them time to amortize out their investment.

But on this one, despite my great respect for my friend from New York who has worked long and hard, I think that the distribution of funds is a very serious inequity. I believe we can, and must, correct that flaw replacing this Edsel of a funding formula.

I am not asking for a funding formula that is finally going to restore the roughly $2.5 billion outflow of revenues donated to other States since 1956 by the taxpayers of Texas because some of it just had to happen that way to get this interstate across those Western States. I cannot even reasonably expect adoption of a formula that will make Texas a donee State for the next 5 years. But I will fight alongside my colleagues to adopt a formula that accurately reflects the transportation needs for the citizens of my State and other States that have been shortchanged for too long.

Thank you, Mr. President.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho requested to be recognized next.

Mr. SYMMS. Mr. President, I further extend my unanimous-consent request to yield 5 minutes to the manager of the bill without losing my rights to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I would like to take a moment to thank my chairman and friend for so many years, the senior Senator from Texas, for his remarks, and just to make some very brief comments about them.

First of all—because it is relevant—he mentioned that in my opening remarks I commented that the Interstate System would have the result of a flow of resources out of the Northeast quadrant to the South and West.

I think he will find that that was an article written in the Reporter 30 years ago. At that time, it was expected the interstate would be finished by 1969—a 15-year enterprise. I suspect what I

wrote was accurate then. I could not for a moment assert that it is accurate now.

My point is that I think in the highway program we have a classic case of public sector disease. This system did not get finished in 15 years. It took three times as long and five times as much money as it was meant to do. A public sector which does not have to account for costs, and does not have to produce productivity increases accomplish that, as no one knows better than the Senator from Texas.

A very important fact is that we really do not know this data very well. We are dragging it out of the Department of Transportation. They have not had to know. Why know what the prices and costs are when they do not make any difference? That is the public sector disease. Transportation productivity, as the Senator has heard me say, is growing at the medieval rate of 0.2 percent.

As an example of the complexity of this program; ask what are the per capita outlays? Nationwide, the per capita outlay for 1990 from the trust fund was $54.25; New York got $33.59, Texas got $60.41, and Wyoming got $245.74.

Just doing the ratios of dollars received per dollars constitute conceals per capita effect and the impact of the program. It does not reflect the fact that the trust funds only pay out about 94 percent of what they bring in because 6 percent is overhead, public lands, Indian lands, emergency relief, and the like.

Just to repeat that what the committee did, absent any powerful rationale one way or another, was to accept the historic pattern of outlays. That may prove to have been a mistake, but it was not an inadvertent one. We just judged this was the best case we could make to people. You will get what you have been getting, and there will be more dollars.

Mr. BENTSEN. Mr. President, I say to my distinguished friend, I am delighted to have his statement concerning his previous statement, and I did say I was sure he was right then, but later that changed.

I agree with him very much insofar as the question of the efficiency of our highway system, or the lack of it. I think it has been quite a shock perhaps to some of the highway people in this country to find what has been happening in Europe with the improvements, the increase in productivity, and the permanence of the installations as related to ours.

Hopefully that will be an education that we will absorb, and we will change some of our production methods.

I also want to say to my friend from New York that I understand his desire to see if we cannot achieve some accommodation in this. I am hopeful we can.

Mr. MOYNIHAN. Mr. President, I thank the Senator from Idaho, who has been very forbearing.

AMENDMENT NO. 305

(Purpose: To ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible)

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS], for himself, Mr. BOREN, Mr. BROWN, Mr. BURNS, Mr. COATS, Mr. COCHRAN, Mr. CONRAD, Mr. CRAIG, Mr. DECONCINI, Mr. DIXON, Mr. GARN, Mr. GRASSLEY, Mr. HATCH, Mr. HEFLIN, Mr. HELMS, Mr. LUGAR, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. PACKWOOD, Mr. SEYMOUR, Mr. SIMPSON, Mr. SMITH, and Mr. WALLOP, proposes an amendment numbered 305.

Mr. SYMMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following new section:

"SECTION . PRIVATE PROPERTY RIGHTS ACT.

"(a) This section may be cited as the "Private Property Rights Act."

"(b) DEFINITIONS.—As used in this section:

"(1) The term "agency" means all executive branch agencies, including any military department of the United States Government, any United States Government corporation, United States Government controlled corporation, or other estabishment in the executive branch of the United States Government.

"(2) The term "taking of private property" means an activity wherein private property is taken such that compensation to the owner of that property is required by the fifth amendment to the Constitution of the United States.

"(c) PROTECTION OF PRIVATE PROPERTY.—No regulation promulgated after the date of enactment of this Act by any agency shall become effective until the issuing agency is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity, with the goal of minimizing such where possible.

"(d) JUDICIAL REVIEW.—

"(1) Judicial review of actions taken pursuant to this section shall be limited to whether the Attorney General has certified the issuing agency as in compliance with Executive Order 12630 or similar procedures, such review to be permitted in the same forum and at the same time as the issued regulations are otherwise subject to judicial review. Only persons adversely affected or grieved by agency action shall have standing to challenge that action as contrary to this section. In no event shall such review include any issue for which the United States Claims Court has jurisdiction.

"(2) Nothing in this subsection shall affect any otherwise available judicial review of agency action.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 306 TO AMENDMENT NO. 305

(Purpose: To ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible)

Mr. SYMMS. Mr. President, I send an amendment in the second degree to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS], for himself, Mr. BOREN, Mr. BROWN, Mr. BURNS, Mr. COATS, Mr. COCHRAN, Mr. CONRAD, Mr. CRAIG, Mr. DECONCINI, Mr. DIXON, Mr. GARN, Mr. GRASSLEY, Mr. HATCH, Mr. HEFLIN, Mr. HELMS, Mr. LUGAR, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. PACKWOOD, Mr. SEYMOUR, Mr. SIMPSON, Mr. SMITH, and Mr. WALLOP, proposes an amendment numbered 306 to Amendment No. 305.

Mr. SYMMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the word "SECTION" and insert the following:

" . PRIVATE PROPERTY RIGHTS ACT.

"(a) This section may be cited as the "Private Property Rights Act".

"(b) DEFINITIONS.—As used in this section:

"(1) The term "agency" means all executive branch agencies, including any military department of the United States Government, any United States Government corporation, United States Government controlled corporation, or other establishment in the executive branch of the United States Government.

"(2) The term "taking of private property" means an activity wherein private property is taken such that compensation to the owner of that property is required by the fifth amendment to the Constitution of the United States.

"(c) PROTECTION OF PRIVATE PROPERTY.—

(1) No regulation promulgated after the date of enactment of this Act by any agency shall become effective until the issuing agency is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity, with the goal of minimizing such where possible.

(2) Upon receipt of guidelines proposed by an agency for compliance with the procedures referenced in paragraph (1), the Attorney General shall, in a reasonably expeditious manner, either approve such guidelines, or notify the head of such agency of any revisions or modification necessary to obtain approval.

"(d) JUDICIAL REVIEW.—

"(1) Judicial review of actions or asserted failures to act pursuant to this section shall be limited to whether the Attorney General

has certified the issuing agency as in compliance with Executive Order 12630 or similar procedures, such review to be permitted in the same forum and at the same time as the issued regulations are otherwise subject to judicial review. Only persons adversely affected or grieved by agency action shall have standing to challenge that action as contrary to this section. In no event shall such review include any issue for which the United States Claims Court has jurisdiction.

"(2) Nothing in this subsection shall affect any otherwise available judicial review of agency action".

Mr. SYMMS. Mr. President, I am going to speak very briefly on this amendment, but just to describe it to my colleagues again, this is what is known as the Private Property Rights Act, Senate bill 50. It enjoys the sponsorship of many Members of both parties. There are 41 cosponsors as of right now.

Mr. President, I just received a call from the Vice President this morning asking me to please amend the highway bill and put this amendment on it. It is something the administration considers important in the process of this work.

I will ask unanimous consent at the end of my remarks to include letters from the Vice President, from the Justice Department, letters from the Senators who are sponsors of the other bill, and the following organizations who support it, some 45 or 50 in number, letters from various farm organizations, and other associations and groups that support this, the National Federation of Independent Business, among others.

Mr. President, as the Nation has developed its system of roads, highways, turnpikes, interstates, it has often been necessary to cross someone's private property. In some cases it has been necessary to clip off the corner of the field or go right through the middle of the field or shave out the backyard. But throughout the building of our highway system one principle has underlined every single instance where the public need for transportation has required easement across private property. That principle is recognized within the very Bill of Rights whose bicentennial we celebrate this year as the sanctity of private property and the necessity of "just compensation."

Mr. President, I sent that amendment to the desk on behalf of myself and Senator BOREN from Oklahoma, the distinguished senior Senator from that State who has been a great help to me in this effort, as well as another group of Senators who are also sponsoring the amendment today.

All of the Senators, I might say, who are sponsors of Senate bill 50 for one reason or another may not be sponsoring this amendment. I did not want to confuse that. But there is a large contingent, bipartisan contingent of Senators, supporting this amendment today along with Senator BOREN and I.

The authors of the Bill of Rights understood that property cannot be taken for public use without justifiably compensating the owner. The fifth amendment prohibition on "taking without compensation" guarantees a basic human freedom, the right to be secure in one's own property, to know the value of what you have labored and saved for cannot be denied you even if an overriding public need demands the use of a particular piece of property in which that value is stored. That property may be taken to satisfy the public need but only in exchange for something of equal value. If it is in the good of the public interest, then it may be taken, but just compensation has to be rewarded.

The "just compensation" clause has not been a serious obstacle to our Nation's highway program. But there are some who believe it is too great an obstacle for other pressing public wants and desires as Congress has sought to supply the public with certain values such as open space, wildlife habitat and recreational areas, while at the same time laboring under record budget deficits.

Congress has treaded dangerously close to "usurping the private property of individuals" in the name of achieving a public goal.

When the Government regulates and denies the value of someone's property without initiating formal condemnation proceedings, it is called "inverse condemnation" or a "regulatory taking."

Right now, under the current system, the only recourse for those who believe their property has been "taken" in this manner is to sue the Government under the fifth amendment, a recourse that may cost someone as much as $50,000 just for starters. It is not a way for Americans at large to secure their private property rights, which is why I am offering this amendment. It is why the Vice President called me this morning.

It is believed by members of this Government and members of the private sector who own property that we need to require all agencies of the Federal Government to establish and follow administrative procedures for minimizing trespasses on private property.

The amendment, drafted with the assistance of the administration, is designed to build on already existing procedures required by the President through Executive order. The amendment does not codify any one particular procedure, but requires that in order for agencies to be able to promulgate regulations they need to have in place some type of procedure for assessing impacts on private property with the goal of minimizing such where possible.

In the most recent review of the private property rights amendment which I am sponsoring, the Justice Department had this to say:

This legislation * * * will enhance respect for constitutionally protected rights of individuals and private property, reduce the fiscal burden on all taxpayers from unnecessary takings, and at the same time effectively advance the public interest.

The genius of our system, in this bicentennial of the Bill of Rights, is that it remains capable of doing all of this simultaneously.

Mr. President, I ask unanimous consent to have printed in the RECORD copies of the Justice Department's communication on this legislation as well as a letter from the Vice President noting the administration's strong support for the initiative. And I ask to insert a list of the 64 organizations that have endorsed this measure. The list covers a wide range of farm and small business, real estate, advertising, civil rights, and environmental organizations who recognize the absolute necessity of a strong institution of private property in this country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE VICE PRESIDENT,
Washington, March 21, 1991.

Hon. STEVE SYMMS,
U.S. Senate, Washington, DC.

DEAR SENATOR SYMMS: I am writing to assure you that we welcome your important efforts to protect private property rights. The Administration supports your legislative initiative in The Private Property Rights Act to protect private property owners from unintentional government intervention, and to encourage the Federal agencies to avoid unnecessary expenditures.

Proper management of Federal regulatory programs and effective program implementation require thoughtful analysis before action is taken. Executive Order No. 12630 requires a Federal agency to ask itself, before it acts, whether a proposed government regulatory policy or action would "take" individual rights in property and trigger the Constitution's obligation to pay just compensation. The legislation which you, Sen. Boren, and others are sponsoring would strengthen the management of Federal programs to prevent inadvertent Federal encroachment on private property.

Recent judicial decisions finding that the government has taken property have resulted in financial judgment obligations in excess of $120 million for "regulatory takings." As the courts focus increasingly on the consequences of Federal regulation on private property rights, these constitutionally required Federal payments and the consequent burden on the taxpayer are likely to increase. Financial responsibility argues for evaluating the risks of these costs before, rather than after, the obligation occurs.

Your bill, S. 50, is vitally important both to improve Federal management, and to reduce government liability. The Administration looks forward to working with you to secure prompt passage of this critical legislation.

Sincerely,

DAN QUAYLE.

U.S. DEPARTMENT OF JUSTICE, ENVIRONMENT AND NATURAL RESOURCES DIVISION,

Washington, DC, April 30, 1991.

Hon. STEVE SYMMS,
U.S. Senate, Washington, DC

DEAR SENATOR SYMMS: I appreciate the opportunity to address your renewed efforts to secure passage of legislation relating to the protection of private property and Executive Order 12630. Commenting on your proposed amendment to S. 2830 last term, the Administration's October 1, 1990 letter expressed firm support and outlined two refinements—on expanding the agencies included within the scope of the legislation and the other detailing the nature of the remedy itself. I have enclosed a copy of the October 1, letter with this correspondence.

Executive Order 12630 directs agencies to consider the implications of their actions before taking them and to look carefully at alternative actions to avoid *unnecessary* infringements to individual rights to private property. This analysis is designed to introduce into agency decisionmaking the broader government-wide concerns that might otherwise be overlooked. EO 12630 does not negate or supersede an agency's statutory responsibilities.

S. 50 embraces the suggestions which we made in 1990 and we are pleased to support it strongly.

In this letter, I will focus on the changes incorporated in this term's bill. First is the matter of scope. By its terms, S. 50 would apply to: all executive branch agencies which engaged in activity with the potential for taking private property, including any military department of the United States Government, any United States Government corporation, United States Government controlled corporation, or other establishment in the Executive Branch of the United States Government.

This effort addresses our suggestion that the reach of the legislation be expanded to all executive branch agencies.

As we outlined in our October letter, a number of recent judicial decisions, holding that "regulatory" takings occurred, involved differing programs administered by several agencies. *See, e.g., United Nuclear Corporation* v. *United States*, 912 F.2d 1423 (Fed. Cir. 1990) (cancellation of leases constitutes a taking); *Whitney Benefits, Inc.* v. *United States*, No. 90-5058 (Fed. Cir. Feb. 26, 1991) (prohibition of surface mining in alluvial valley floor creates compensable taking); *Loveladies Harbor, Inc.* v. *United States*, 21 Cl. Ct. 153 (1990) (denial of 33 U.S.C. §1344 permit found to be a taking); and, *Florida Rock Industries* v. *United States*, 21 Cl. Ct. 161 (1990) (denial of 33 U.S.C. §1344 permit found to be a taking).

As you are aware, since the October letter the United States Court of Appeals for the Federal Circuit has affirmed the lower court holding of a taking in *Whitney Benefits*. Further, since that time, the Circuit has found a taking in *Yancey* v. *United States*, 915 F.2d 1534 (Fed. Cir. 1990) (avian flu quarantine took uncontaminated turkey flock). Again, it is noteworthy that the monetary judgments against the United States in those cases total in excess of $120 million dollars.[1] These rulings and the spectrum of programs which they reach confirm the prudence of extending the bill to all executive branch agencies.

We suggest one refinement of S. 50 that would ensure its intended scope. Section 2(1) of the bill limits its scope to agencies "which engage in activity with the potential for taking private property." However, whether the activity has a potential for taking private property is the precise question which your bill seeks to ensure is answered. Accordingly, we would suggest deletion of the quoted language.

The second comment relates to judicial review in Section 4. That section now makes clear that the bill does not expressly provide for judicial review of either the procedures governing takings assessments or the assessments themselves. Neither the applicable procedures under the Order, nor its implementing guidelines, nor the substance of the Attorney General's decision to certify such procedures would be subject to review. Rather, review would be limited to "whether the Attorney General has certified the issuing agency as in compliance with Executive Order 12630 or similar procedures." Section 4(a).

We understand this review to extend only to whether the Attorney General has either issued supplemental guidelines for an agency or determined that the agency has elected to comply with the government-wide guidelines. This review will only occur in the forum otherwise having review of the substantive decision itself (*i.e.*, the promulgation of regulations), take place simultaneously with the review of the regulations, and occur in strict accordance with the otherwise relevant statutory review provisions in order not to cause additional undue delay.

Judicial review of the procedural validity of the agency's taking implication assessment should have no effect whatsoever on a subsequent action in the Claims Court alleging that a specific agency action resulted in a taking. This provision in Section 4(a) is specifically designed to preclude additional, duplicative litigation. Of course, notwithstanding Section 6 of the Executive Order, the individual takings analysis or other documents developed by a department or agency pursuant to applicable guidelines would be part of the administrative record and would, in accordance with generally applicable principles of administrative review, be considered by a reviewing court in deciding whether agency action complies with the requirements of other applicable statutes, including the Administrative Procedure Act. Thus, for example, if an agency decides to alter a regulation based upon a takings analysis, the record must support that decision.

In sum, the changes you have incorporated into S. 50 directly respond to suggestions raised in our October letter and we are pleased to reaffirm our support for your efforts. By recognizing the need to consider the effect of regulatory actions on private property, and the possibility that such actions may effect a taking, S. 50 ensures that agencies will attempt, in carrying out their statutory functions, to prevent unnecessary takings. S. 50 will enhance respect for the constitutionally protected rights of individuals in private property, reduce the fiscal burden on all taxpayers from unnecessary takings, and, at the same time, effectively advance the public interest. The genius of our system, in this Bicentennial of the Bill of Rights, is that it remains capable of doing all of this simultaneously. We look forward to working with you toward achieving these goals.

Sincerely,

RICHARD B. STEWART,
Assistant Attorney General.

[1] Our discussion of these decisions should in no way be construed as a change in the Department's legal position in each case.

THE FOLLOWING ORGANIZATIONS SUPPORT THE PRIVATE PROPERTY RIGHTS ACT

Alta California Alliance.
American Agriculture Movement.
American Agri-Women.
American Farm Bureau Federation.
American Forest Council.
American Forest Resource Alliance.
American Hotel/Motel Association.
American Legislative Exchange Council.
American Mining Congress.
American Paper Institute.
American Sheep Industry Association.
Blue Ribbon Coalition.
Building Owners and Managers Assoc. International.
Center for Individual Rights.
Citizens for the Environment Action Fund.
Citizens for Property Rights, Inc.
Citizens for a Sound Economy.
Coastal Georgia Regional Development Center.
Competitive Enterprise Institute.
Eight-Sheet Outdoor Advertising, Inc.
Enviromental Conservation Organization.
Fairness to Land Owners Committee.
The Fertilizer Institute.
Georgia Tidewater Conservation Association.
Greater Yellowstone Conservation Districts.
Institute of Outdoor Advertising.
International Council of Shopping Centers.
Land Improvement Contractors Association.
Landowners Association of North Dakota.
Louisiana Home Builders Association.
Montana Public Lands Council.
National 4-F Foundation.
National Apartment Association.
National Association of Home Builders.
National Association of Industrial and Office Parks.
National Association of Realtors.
Nat'l Assoc. of Reversionary Prop. Owners.
National Campground Owners Association.
National Cattlemen's Association.
National Caves Association.
National Electric Sign Association.
National Family Farm Coalition.
National Farmers Organization.
National Farmers Union.
National Federation of Independent Business.
National Forest Products Association.
National Grange.
National Hardwood Lumber Association.
National Inholders Association.
National Manufactured Housing Federation.
National Milk Producers Association.
National Multi-Housing Council.
National Realty Committee.
National Water Resources Association.
National Wilderness Institute.
Oakland Citizens for Justice.
Oklahoma Farmers Union.
Oregonians in Action.
Outdoor Advertising Assoc. of America.
Pacific Rim Trade Association.
Pennsylvania Land Owners Association.
Riverside and Landowners Protection Coalition.
S.T.O.P. of Indiana.
U.S. Chamber of Commerce.
Washington Citizens for World Trade.
Washington Property Owners Association.

Mr. SYMMS. Mr. President, I note that S. 50, the legislation which is identical to the text of this amendment, is sponsored by 41 Members of the Senate. I encourage all other Senators to join us.

Mr. BOREN addressed the Chair.

Mr. SYMMS. Excuse me 1 minute.

I note Senator GORTON is here. If I might ask, would the Senator's schedule permit him to withhold for a few more minutes? Senator BOREN is trying to make a brief speech.

Mr. GORTON. Certainly.

Mr. GLENN. Mr. President, what is the order here? I have, too, another meeting I was supposed to have been at 20 minutes ago.

The PRESIDING OFFICER. There is no order. The Senator from Oklahoma is recognized.

Mr. GLENN. Mr. President, I have been waiting for some time also, and I am not prepared to take any more time than Senator BOREN.

The PRESIDING OFFICER. The Senator from Oklahoma has the floor.

Mr. BOREN. Mr. President, I will be very brief, indeed. I am proud to cosponsor this amendment with the Senator from Idaho.

This is an amendment that has a broad bipartisan support and support from a cross-section of many groups across the country. The amendment is very straightforward. It says that, from the date of enactment, no regulation shall take effect until the issuing agency has been certified by the Department of Justice that it has the procedure in place to assess the potential for the taking of property as a result of these regulations, with the goal toward minimizing such taking of property, diminishing of property rights, taking of land outright.

There are over $1 billion in outstanding claims against the Federal Government right now that involve the taking away of property rights, taking away of property. So this bill makes common sense.

Why should these agencies not have to consider whether their regulations will result in the taking of property? Otherwise, agencies could blindly and unintentionally run a land acquisition program, a very costly land and property acquisition program, and pay for it through the U.S. Court of Claims budget, rather than having policy decisions made by the Congress, administration, and other elected officials as to the basis of what lands and properties need to be taken by the Federal Government.

That is exactly what has been happening; unintentionally, the impact of regulations has resulted in the taking of property that has cost the taxpayers a lot of money. It is tied up in courts with litigation. There are over $1 billion in claims right now, because inadequate attention was paid from the beginning as to the impact these regulations might have on the taking of property.

So I think it makes sense. Even if the amendment is enacted, there will continue to be, of course, some taking of property. The fifth amendment concerns will have been explicitly evaluated by the agency and, hopefully, this amendment will result in more moderate regulation, so that fewer citizens will have to sue the Federal Government in order to protect their rights.

It is very simple and straightforward. I understand it is supported by the administration, as the Senator has indicated; EPA, USDA, the Corps of Engineers, and the Interior Department stated, for example, it will not add an additional paperwork burden.

So I simply say that I am pleased to join with Senator SYMMS in sponsoring this amendment. I think it is a sensible step for us to take, and it should result in a better decisionmaking process in which we can determine how much land, how much property, will be taken by the Federal Government, and whether we can afford those takings, and look at it as a matter of policy, rather than having it done through the back door, unintentional sometimes, to the issuance of regulations that cause citizens to have a cause of action in the Court of Claims.

I thank my colleagues, and I hope the Senate will adopt this amendment.

Mr. GLENN. Mr. President, I rise to express my opposition to consideration of the Private Property Rights Act, which has been offered by Senator SYMMS as an amendment to S. 1204, the Surface Transportation Efficiency Act.

Mr. President, I know that, as the Senator said, there are 41 cosponsors of this, which was a separate bill, S. 50. That is fine. The problem today is that we were not aware until late yesterday that this was going to be brought up, not in the context of a freestanding piece of legislation, but as an amendment on this Surface Transportation Efficiency Act, because there are implications of this that I think we need to look into.

I am not against looking into them and considering this, but I think to vote it today would be getting ahead of where we ought to be.

Mr. President, I do not take second place to anybody in my concern about private property and the protection of private property rights. I agree also, completely, that there are areas we need to look into that need legislation, and need it badly, to ensure that some of our regulations, such as some of the wetlands legislation, is not being misused. I think we need to consider things like that.

However, I also believe that this amendment furthers the private property and protection of private property rights only at an unacceptable cost to an important and very widely supported congressional mandate in the environment, public health, and in the safety realms.

It compromises the basic principles, as I see it, of fairness and accountability that are central to the integrity of our administrative decisionmaking process.

As I have informed my esteemed colleague and the floor manager of S. 1204, Senator MOYNIHAN, in a letter this morning, I oppose this amendment for two basic reasons:

First, I am opposed to the proposal just as a matter of policy. The bill is being portrayed as a simple, straightforward move to protect private property rights and ensure compliance with an existing Executive order. The Private Property Rights Act involves giving congressional approval to a regulatory review scheme that may have very significant negative consequences for the implementation of things Congress passed here—congressionally mandated policies.

The second reason for opposition to this amendment is that today's debate will not give the proposal the attention it deserves. I hope the people listening in their offices realize that. I hope they listen to the implications this particular piece of legislation has.

Mr. SYMMS. Will the Senator yield for a clarification?

Mr. GLENN. After I finish my statement, I will be glad to yield.

This proposal came to my attention last year as a proposed amendment to the farm bill, and it was defeated at that time.

Senator LEAHY, last year in debate on this, said that it was a lawyers-get-rich bill in a long statement in the CONGRESSIONAL RECORD of July 27, 1990, a little less than a year ago, on page S10914, in which he took very strong exception to the proposals on behalf of the farm interests in the country.

Mr. President, in January of this year, this bill was introduced as S. 50 and referred to the Committee on Governmental Affairs, which I chair.

The proposal has not yet been the subject of a hearing in the committee, and I understand the matter has not been set down for a hearing in the subcommittee to which S. 50 was assigned within the committee. I understand that was a subject of some controversy.

Let me say that whatever that controversy was with regard to getting a hearing, let me clearly state that, as chairman of the Governmental Affairs Committee, I will certainly commit to hold a hearing on this bill so that we bring out all aspects of it.

It is at such a hearing that the requisite record will be established to bring out all the arguments for or against the need for this legislative proposal, and all the ways it can be used to further good government, and all the ways it can be used to thwart good government, if you will. For the reason of not having a hearing record, I oppose consideration of this amendment at this time.

In case there are any doubts as to my position, I want to say a few things about the substance of the proposed amendment. I am opposed to the Private Property Rights Act. It gives a

congressional stamp of approval to Executive Order No. 12630, which was a Reagan administration Executive order that could, if misused for quite other reasons than the specific requirements of law, be the mechanism to frustrate environmental protection, health and safety regulations, and other Federal programs.

In simplest terms, Executive Order 12630 requires agencies to consider the constitutional takings implications of their actions; that is, whether a regulation or other action would limit property use so severely as to require compensation. I agree with that as a goal. That is a commendable goal. But this legislation would permit a process to be set up that can be rather drastically misused.

A closer reading of the order conveys a much more troubling message. Charles Fried, who was Solicitor General from 1985 through 1989, wrote a book recently that spelled out this concern quite clearly. The book is called "Order and Law: Arguing the Reagan Revolution—A Firsthand Account." In that book, he wrote as follows:

* * * Attorney General Meese and his young advisers—many drawn from the ranks of the then fledgling Federalist Societies and often devotees of the extreme Libertarian views of Chicago law professor Richard Epstein—had a specific, aggressive, and, it seemed to me, quite radical project in mind; to use the takings clause of the fifth amendment as a severe brake upon Federal and State regulation of business and property. The grant plan was to make government pay compensation as for a taking of property every time its regulations impinged too severely on a property right—limiting the possible uses for a parcel of land or restricting or tying up a business in regulatory red tape. If the Government labored under so severe an obligation, there would be, to say the least, much less regulation.

Mr. President, his concerns are well founded because, obviously, if you had a situation like that, whether Congress had approved, the President signed into law, or whatever, a particular piece of legislation, it would mean that under this kind of legislation and with this requirement for a Department of Justice approval on all of these different things, you are talking, in effect, about getting into a whole different area that can be used to thwart existing law that this Congress has passed, the President has signed, but a subsequent administration might not necessarily agree with.

In addition to these origins, Executive Order 12630 is based on a skewed reading of Supreme Court decisions and, I believe, overstates the taking danger from agency regulatory decisions. You can see a memorandum from the American Law Division, Congressional Research Service, of December 19, 1988. For example, the order states that before regulating property use for the protection of public health and safety, an agency must show that its action will "substantially advance" health and safety. The Supreme Court, quite to the contrary, restricted its "substantially advance" taking test to land-use actions, not to health and safety programs at all. So we are already branching out way beyond what anybody thought was the purpose and what something I think that all the environmentalists, all health and safety people interested in that kind of legislation should really be interested in looking at here. Indeed, as the Congressional Research Service has pointed out, Government actions to protect health and safety are the least likely to be held takings.

I am certainly in favor of instituting financial controls so that every Federal agency can assess and plan for potential liabilities that may affect or flow from its decisions. This is one goal of the Chief Financial Officers Act of 1990, which we passed last year and enacted into law after 6 years of work by the Committee on Government Affairs. The CFO Act is now in its first stages of implementation. I would say the amount of attention the press has given to this potentially far-reaching piece of legislation has been that we just have not seen much about it. It is not a B-2. It does not involve Social Security. It is not a buzzword type thing. It is the type of thing, if we are going to get control and efficiency in Government financial circles, how we are going to do that is how important the CFO Act is now in its first stages of implementation. I am confident that within a short time we will see that Federal agencies have the financial management systems required to account for their activities.

However, while it is one thing to approach financial management through a comprehensive system of accounting, financial statement, and internal control requirements, it is quite another to suggest that that is the purpose of either S. 50 or of Executive order 12630. Quite the contrary, the clear purpose of both is to create a regulatory review scheme that can be used to frustrate Federal agency implementation of congressionally mandated protections of the environment, as well as the health and safety of the American public. It may not be its intent, but it certainly can be used, and there is nothing in it that prevents it from being used for that.

The order's antiregulatory purpose is seen in the way it singles out agency actions to protect public health and safety for special restrictions. This is not only contrary to congressional mandates for the protection of public health and safety, but also is contrary to the fact that health and safety programs are, as mentioned, the least likely to bring about any takings liability. They just do not get into that in the normal course of events.

Additionally, the antienvironmental purpose of S. 50 is seen in its coverage, as originally drafted now, which was limited to the four Federal agencies with primary environmental responsibilities: Interior, Agriculture, Army, and EPA. The broader coverage of S. 50, as we see it today, came about because of Department of Justice insistence.

The regulatory review arrangement provided by the order also troubles me. In additon to the guidance that is to be used by the Department of Justice, the order states that agencies must justify the "takings implications" of their actions in their regulatory review submissions to the Office of Management and Budget. Thus, in endorsing this legislation, Congress would also be endorsing OMB regulatory review all over again.

The Committee on Governmental Affairs and other committees of Congress have documented the growth of OMB influence on agency rulemaking and the negative impact that OMB has had on many agency decisions. I think it would be a grave mistake for the Senate to take what amounts to summary action on a legislative proposal having such consequences.

Why do we even need S. 50? the Justice Department tells us that the executive branch is solidly behind the Executive order. If this is so, then why give the Attorney General unbridled authority to block regulations across agencies and to compel compliance that we are told will come about anyway? Furthermore, I do not believe that the cost of Federal takings has reached such a level that further action by Congress, as in S. 50, is warranted. The only truly large takings judgment against the United States, $180 million in the Whitney Benefits case, would not have been prevented by S. 50 because it involved a taking action caused by congressional enactment, not by agency action at all.

So it should be clear that I do not believe that either S. 50 or Executive order 12630 represents good public policy.

Mr. President, I state one more time I am for private property, I am for protection of private property, I am for private property rights, but I do not believe that S. 50 delivers on its supposed simple promise to protect those rights. Even more, it should be very, very clear that I oppose legislating in this area through an unexamined floor amendment, one that has not even been through the hearing process that might be quite product reaching, to a piece of legislation such as the Surface Transportation Efficiency Act.

Again, S. 50 is not so much a private property bill as it is a regulatory process bill. It requires and deserves consideration in the proper context, which is the jurisdiction of the committee on Governmental Affairs, and where I will be happy to hold a hearing on it if the

floor sponsors of this bill would so agree.

Let me say that while I understand the matter has not been set down for a hearing, I assure you that I will commit the committee to hold hearings to air the issues involved in S. 50, and we might be able to make it something that we can all accept and enthusiastically support. But, in the meantime, I maintain my opposition to the Private Property Rights Act as an amendment to S. 1204.

Incidentally, in introducing S. 50, Senator SYMMS, I believe, made much of a man by the name of John Pozsgai, who he suggested was the victim of callous and heavy-handed Federal regulators who interfered with his right to use his property.

For the record, I ask unanimous consent for the printing in the RECORD of documents that indicate that Mr. Pozsgai's case never involved any takings claim, as they are known.

It also does not involve overzealous Federal action. The accompanying article from the July 1990 issue of Audubon magazine and the accompanying court memorandum denying a reduction or correction of sentence in Mr. Pozsgai's case present a set of facts far different from those made by the proponents of S. 50.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[In the U.S. District Court for the Eastern District of Pennsylvania, Criminal Action No. 88-00450-01]

UNITED STATES OF AMERICA *v.* JOHN POZSGAI

MEMORANDUM

KATZ, J.

Defendant seeks a reduction or correction of sentence.

Defendant owned and operated a truck repair business in Morrisville, Pennsylvania. Defendant decided to buy an adjoining 14-acre tract in order to expand his business.

While defendant was negotiating to purchase the tract, he learned from engineering consultants that the tract met the criteria established by the Corps of Engineers for protected "wetlands". Shortly after he began purchasing the tract, however, defendant began depositing fill material onto the tract without obtaining approval of the Corps of Engineers. In April 1987, a Corps of Engineers inspector visited defendant at the site and confirmed that the tract contained wetlands protected under federal law. As a result, the inspector warned defendant that federal law prohibited him from continuing to deposit fill onto the land without first obtaining the necessary permits and authorization.

Despite repeated warnings, defendant continued to have truckloads of fill material—mainly construction and excavation debris—dumped onto the site. In September 1987, the Corps of Engineers notified defendant by letter that his unauthorized filling was in violation of the Clean Water Act and directed him to cease and desist. Defendant ignored the notice and continued to deposit fill onto the site. After continued monitoring the United States Environmental Protection Agency notified defendant in early December 1987 that his "filling without a permit is a violation of the Clean Water Act" that could subject him to penal sanctions. After receiving the notice, defendant continued filling the site.

As a result, the Corps of Engineers issued defendant a second notice of violation on December 17. That notice reiterated the earlier warnings.

The notice again advised defendant to stop his unlawful filling and instructed him to apply for a permit if he wished to resume his activities.

The filling process continued in spite of the warnings. On August 24, 1988, the United States Attorney filed a civil action against defendant and obtained a temporary restraining order directing defendant immediately to stop discharging fill material onto the wetlands site. Over the next several weeks, however, truckloads of fill material continued to be dumped onto the site.

Stating that "[i]t's hard to visualize a more stubborn violator of the laws that were designed to protect the environment," the court sentenced defendant to a three-year term of imprisonment on Counts 1-14 (the pre-Guidelines counts), a concurrent term of 27 months' imprisonment on Counts 16-41 (the counts governed by the Guidelines), a five-year term of probation on Count 15, and a one-year term of supervised release on the Guidelines counts. The court also ordered defendant to pay a fine of $5,000 on each count, for a total of $200,000, and as a condition of probation, the court ordered defendant to comply with restoration plan for the wetlands site.

The fine imposed on each count was at the bottom of the range prescribed by Congress. Under Section 309(c)(2) of the Clean Water Act, 33 U.S.C. 1319(c)(2), any person found guilty of an offense "shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both." Defendant stood convicted of 40 separate violations, and thus faced a fine of up to $2,000,000.

Granted that the fine imposed is not mandatory, the combined fine and imprisonment are necessary to deter defendant and others who might be tempted to defy the criminal laws of the United States designated to protect the environment. This defendant has shown no remorse. According to the presentence report, he owns real estate. Under this court's judgment, the fine shall be paid "as the probation department determines he is able." The five year period of probation following his release from imprisonment is necessary for his implementation of a restoration plan to correct the damage he did.[1] The effective term of imprisonment is specified by the Sentencing Commission Guidelines which are being on this court. The jury has spoken. This court has ruled. The Court of Appeals has ruled. The Supreme Court denied certiorari. The sentence stands.

ORDER

AND NOW, this 5th day of March, 1991, upon consideration of defendant's Motor For Reduction Or Correction Of Sentence, it is hereby ORDERED that the said Motion is DENIED.

By the Court:
MARVIN KATZ, Jr.

[1]Nor was the damage abstract. A neighboring landowner testified at trial to damage to his building when the rains came.

[From Audubon magazine, July 1990]

THE FABLE OF POZSGAI'S SWAMP—A TALE WITHOUT HEROES

(By John G. Mitchell)

Once upon a time there was a little swamp in the big woods. Gum trees grew in the swamp, and skunk cabbage, and clumps of wild grasses with long brown tassles like lions' manes. Birds came to feed on seeds and insects, and raccoons and foxes left their sign in the bed of the creek that ran through the swamp on its way to the river, as creeks were accustomed to do those days, instead of disappearing forever into some underground pipe or the not-so-thin air. This was during a period in our history so long ago that no living man or woman has a memory of it. This was before the industrial revolution and interstate commerce and the Army Corps of Engineers and the Washington Legal Foundation and the Clean Water Act, Title 33, U.S. Code, Sections 1311(a) and 1319(c)(2)(a), and the Hungarian émigré John Pozsgai, who would come to live and work across from what was left of the swamp on West Bridge Street in the little town of Morrisville, Bucks County, Pennsylvania, U.S.A.

What was left of the swamp was not a great deal, for over the years commerce and industry had wrought much change in the land roundabout. There was Trenton, right across the Delaware River from Morrisville. The city had so many factories, people began to say "Trenton makes, the world takes." Folks who worked in the factories couldn't all live in Trenton; some had to settle for Morrisville. So Morrisville began to grow and grow, right up to and over the edge of the little swamp.

Meanwhile, the manner of moving manufactured goods to market was changing, too. Highways were replacing the old canals and even some of the railroads. Here came U.S. Highway 1, raised on fill and four lanes wide, divided, and straight across the lower end of what was left of the little swamp. And here was West Bridge Street across the upper end, with its two-family houses and an old dairy building that John Pozsgai would convert into a garage for the repair of tractor trailers—"You Breakum We Fixem," the mechanic's business card would say.

If you ever happen to be in the neighborhood, you can stand on West Bridge Street, with your back to Pozsgai's garage, and see how the world of commerce and industry has been closing in on what's left of the little swamp. Across the street, on the right, is a junkyard where spare parts appear to be extracted from the rusting skeletons of cars and trucks. On the left, backed up against what's left of the creek that used to run through the swamp on its way to the river, is a tire company and a row of small houses and apartments. The area is zoned for light industrial and highway commercial uses. It's no place for coons and foxes, and only marginally for the grittiest kinds of passing birds. I promise you.

Nevertheless. Whatever remains of the swamp is, in the statutory scheme of things, a wetland. And a wetland it remains ecologically as well. Whatever its scenic and spatial shortcomings, the site can still function as floodplain, water filter, and habitat for scores of small, unremarkable biological beings. In fact, what remains could safely be described as a relic island of once-typical Middle Atlantic coastal plain swamp adrift in a sea of development. Some folks call the development Bos-Wash, which is shorthand for the Boston to Washington megalopolitan corridor. And since the waters of this wetland are "of the United States" and there-

fore protected under federal law, and since regulators and prosecutors are aiming, as they say, "to send a message," and judges are armed with tough sentencing guidelines, woe unto any private individual convicted of dumping fill into such a place without a permit while stubbornly and arrogantly ignoring repeated warnings to cease and desist.

In fact, woe unto John Pozsgai. The Morrisville mechanic stands convicted of forty-one separate counts of violating the Clean Water Act and faces $202,000 in fines, three years in the federal slammer, and five years' probation. If upheld on appeal, the sentence imposed on Pozsgai would likely constitute the harshest ever for a wetlands violation anywhere in America. You Breakem We Fixem.

As any seasoned juror knows, there are two sides to every story. That is always the bad news. The good news is, you only have to believe one. Let us first hear the story from the perspective of the appellant, as distilled through my own observations, the words of the man himself, the briefs of his attorneys, and the representations of friendly media such as Cable News Network, The Wall Street Journal, and Human Events, which bills itself as "The National Conservative Weekly."

It could be said of John Pozsgai that he is a most appealing appellant. I mean Central Casting couldn't have found a player better suited to the role: Refugee from Soviet tank-torn Hungary, circa 1956; blue of eye and gray of hair, axle-grease under the fingernails, no days off from the broken trucks, the modest home next-door with his wife, Gizella, making coffee in the kitchen and Victoria, their twenty-four-year-old daughter, on the telephone with an attorney in Washington, D.C. And across the street, what used to be a little swamp in the big woods.

John Pozsgai would know nothing of swamps, only dump sites. He would look across West Bridge Street at all the junk people had been dumping for twenty years—construction rubble and auto parts and discarded tires, thousands of old tires piling up in the streambed that ran behind the establishment that traffics in new tires. (Not that anyone would accuse the tire dealer of being responsible for this dreadful situation. Besides, dumping dirty old tires into a creekbed in Morrisville, Pennsylvania, does not seem to violate the Clean Water Act quite so conveniently as dumping new fill into an old wetland.)

By and by, John Pozsgai would look across the street and see an opportunity—a place that might someday become his very own, if he could raise the money to buy it. It was a property of 14.2 acres. The absentee owner had so little interest in the land that he permitted the mechanic to cut trees there for firewood. So John Pozsgai had a dream. He dreamed he would clean up the mess of tires and junk and build a big new garage for his business over there where the sound of Fixem would not disturb his neighbors, and maybe improve the rest of the land such that a corner lot or two might be sold later on to a gas station possibly. But it wouldn't be easy. The old dump site was soggy. To fulfill the dream, John Pozsgai was going to have to truck in fill to raise the level of the land.

On June 19, 1987, Pozsgai purchased the 14.2 acres for $140,000, paying $14,000 down and mortgaging his house and garage to cover the balance. He had already started the cleanup operation; Victoria would count 7,000 tires pulled from the old creekbed. And there had been a visit or two by this man who called himself Martin Miller and said he was from the Enforcement Division of the Army Corps of Engineers. Pozsgai would recall that Miller advised him the Corps might decide a permit was needed if fill was to cover more than one acre. And that was rather curious, because when Pozsgai checked with Pennsylvania officials and the National Wetlands Inventory Map, he discovered that his property was not listed as a wetland. Such confusion!

Nevertheless. Better safe than sorry. With the help of Victoria, who holds a degree in journalism from Temple University, Pozsgai (according to one brief) "unsuccessful tried to hire several engineers over the course of several months to obtain the assistance necessary to complete the various permit applications from the federal, state, and local jurisdictions. Eventually each of the engineers admitted they could not complete the application. The first engineer contracted by Mr. Pozsgai delayed any action [on] the application for over six months before admitting that he could not complete it." Such incompetence!

While all this bureaucratic obfuscation was going on. Pozsgai proceeded to cover upwards of five acres of his property with "clean fill," consisting of "topsoil, rubble, earth, and similar inert materials." In December 1987 the Corps advised him to stop. Either stop, or obtain a Water Quality Certificate. The certificate would somehow enable the Corps to determine if he even needed a permit to proceed. Months passed, this jurisdictional authority telling him one thing, that authority telling him another. Unbeknowst to the mechanic, the Environmental Protection Agency had come to West Bridge Street with a video surveillance camera and had installed it in the upstairs window of a neighbor's house in order to film dumptrucks bringing fill to the site. Moreover, EPA had gone to court, filed a civil suit against Pozsgai, and obtained a temporary order restraining him from any further activity at the site. This was in August 1988. To comply with the restraining order, the mechanic placed barrel blockades around his property, barring trucks from entry. But alas, one day while he was in Harrisburg attending to one of those incomplete permit applications, some truckers arrived at the site, rolled the barrels aside, and proceeded to dump their loads—right under the lens of the hidden EPA camera.

For this, and for certain preceding activities, a federal grand jury sitting in Philadelphia indicted John Pozsgai on forty-one criminal counts of knowingly discharging or causing to be discharged, and aiding and abetting the discharge of, fill material into the waters of the United States. This was in September 1988. At high noon one day shortly thereafter, while he was drinking coffee in the kitchen of his home, five peace officers, including three special EPA agents, knocked on John Pozsgai's door, informed him that he was under arrest, and took him away to Philadelphia in handcuffs.

"I think," the mechanic said to me a year and a half later, in his hearty h-dropping Hungarian accent, in the house where he was seized (Victoria having arranged his release on bail after the arraignment, appeals keeping him from jail ever since)—"I think the guy who shot Kennedy got treated better than me." Let us forgive John Pozsgai this one exaggeration, if only in view of what did happen to the guy who shot Kennedy.

The government's version of the tale is woefully lacking in narrative panache, partly because that is the nature of government storytelling, and partly because there are rules barring government officials from discussing litigious matters, especially when those matters are being appealed to the U.S. Supreme Court. Besides, some of Uncle Sam's players had already been treated rather critically by the Press, which, however biased or impartial, seemed generally to concur that in the case of the *United States of America* v. *John Pozsgai*, the United States of America was full of beans. One headline, quoting Pozsgai's attorney, went so far as to refer to the Environmental Protection Agency and jackboots in the same six-column, 36-point Bodoni breath.

Be that as it may, I did manage to obtain a copy of the government's trial brief. It informs us that on or about April 28, 1987, one Martin Miller of the U.S. Corps of Army Engineers received information concerning the unlawful filling of wetlands at a certain location on West Bridge Street in Morrisville, Pennsylvania. And that Inspector Miller went to the site and observed that various earth and building debris had been placed onto property which he determined to be wetlands. And that on several occasions shortly thereafter, Inspector Miller advised John Pozsgai that he could not place or push any more fill onto the wetlands until he had obtained the requisite permit. The government further contends that on August 17, 1987, Inspector Miller returned to the site and observed that a large amount of additional fill had been placed on the property since his last visit; that on September 3rd, the Corps issued to John Pozsgai a Cease and Desist letter; that, throughout the remainder of 1987, the mechanic ignored that letter even as continued violations were observed by neighbors, township officials, and "various companies who were granted permission by Pozsgai to dump fill onto the site."

There is a reference to December 2, 1987. The U.S. Environmental Protection Agency that day issued a written notice specifically advising Pozsgai of the penalties that might be imposed if he did not cease and desist. Pozsgai did not cease and desist. On December 17th, there was another written notice, this one from the Corps of Engineers. The Corps noted continuing violations of the Clean Water Act and warned Pozsgai that if he did not obtain the necessary permit, he would be required to remove all fill material from the site. There was no response from Pozsgai. He did not obtain any permit. He did not remove any fill. The violations continued. Now it was August 1988. The two versions of this tale begin to coincide: temporary restraining order, video surveillance, indictment, arrest. Trial by jury began the day after Christmas 1988 in the U.S. District Court for the Eastern District of Pennsylvania, in Philadelphia, and ended the day before New Year's Eve. The defendant was found guilty on all counts, as charged. Sentencing was set for July 13, 1989. Of John Pozsgai, U.S. District Judge Marvin Katz declared that it would be "hard to visualize a more stubborn violator of the laws that were designed to protect the environment," and promptly imposed sentence under the Clean Water Act.

I have left a few loose threads for the bottom of this letter because, spliced together, they may help to explain not only why the piece is wanting for heroes, but also why its telling was worth the trouble in the first place. This, you might say, is my version.

The jury has rendered its verdict on John Pozsgai, and who am I to dispute its finding of guilt. The major facts of the case, upheld on the first round of appeal by three U.S. Court of Appeals judges, clearly indicate

that John Pozsgai stubbornly ignored repeated warnings that his unpermitted filling activities were in violation of the law. Under the law, he is a convicted environmental criminal, and that is enough in my book to rule him out as any sort of hero. It does not, however, rule him out as an unwitting pawn on a chessboard of political agendas. Consider how the man has been used.

Consider the Washington Legal Foundation of Washington, D.C. The Foundation entered the fray after Pozsgai's local attorneys bowed out—the first after just one court appearance, the second confessing his own inexperience after losing the jury trial. At this point Victoria Pozsgai arranged for the Foundation to take over her father's appeal, pro bono, and the Foundation was delighted to oblige.

The Washington Legal Foundation describes itself as "the most productive and effective pro-free enterprise public interest law firm in the country." In fact, it is a button-down clone of the Mountain States Legal Foundation, where James Gaius Watt practiced environmental law bashing before his appointment as Ronald Reagan's first Secretary of the Interior. The Washington firm can also boast of friends in high places, and does, in the 1988 edition of its annual report. It notes that several allies, "each a long-standing member of WLF's National Board of Advisors, have attained prominent positions in the new administration," and goes on to name Vice-President Dan Quayle and White House Chief of Staff John Sununu. Among its "clients" in 1988 were U.S. Senators Orrin Hatch and Jesse Helms. "Courtroom opponents" that WLF "battled" were Common Cause, the American Civil Liberties Union, Governor Michael Dukakis, the Environmental Protection Agency, Friends of the Earth, Senator Edward Kennedy, the NAACP, Women's Legal Defense Fund, Izvestia, War Resisters League, the Palestine Liberation Organization, and National Audubon Society, among other groups with "anti-business views and extremist social goals." Among its many monographs, legal backgrounders, and working papers were "Reforming the Clean Air Act" (by an executive of the American Petroleum Institute), "The Greening of America's Defenses" ("how various environmentalist groups with an anti-defense bias have sought to block deployment of the MX missile"), "Protecting the Civil Liberties of Busines," and "Whistleblowers in the Nuclear Industry: Giving Employers Fair Treatment."

Paul D. Kamenar is executive legal director of the Washington Legal Foundation. He is also the attorney handling John Pozsgai's appeal to the U.S. Supreme Court. From all the institutions on the Foundation's list of free-enterprise obstructionists, Kamenar appears to have selected the Environmental Protection Agency as his Enemy Number One. Writing of the plight of his Morrisville client in Human Events and on the op-ed page of The Washington Post, Kamenar has accused the Environmental Protection Agency of "strong-arm tactics against small landowners and businessmen," and warns that it is in cahoots with the Justice Department "to use the Pozsgai case as a precedent to start imprisoning corporate officers."

Not that the Pozsgai case is the only one in his dossier of EPA excesses. If you are a reporter, give Kamenar half a chance and he will press on you newsclips, briefs, and video tape galore, all documenting EPA's relentless nationwide persecution of other decent law-abiding citizens whose only desire is to improve their properties with loads of clean fill. Thus, one might begin to wonder just how the priorities fall into place upon the Washington Legal Foundation-Kamenar agenda. Is bashing EPA simply a means to the end of vindicating Pozsgai and other accused land-fillers around the country? Or is the well-publicized predicament of Pozsgai et al. a means to the end of compromising the credibility of EPA, not to mention the effectiveness of the Clean Water Act?

Of course, here we must note that Pozsgai did not become worthy of notoriety, beyond the local media, until after his sentence was imposed by Judge Katz in Philadelphia. That is to say, jackboots did not seem to fit EPA until Pozsgai faced three years in prison and a fine of more than $200,000. (Extrapolating from the mechanic's negative net worth and modest annual earnings, a Cable News Network researcher figured that, in Fortune 500 dollars, the corporate equivalent of Pozsgai's fine would be about $62 billion, or twice the net worth of Exxon. Unfortunately, CNN did not have the inclination to carry the analogy one step further by noting that no polluting corporation, including Exxon, has ever been fined more than a scant fraction of that sum, however greater than Pozsgai's transgression the scope and severity of the corporate offense.)

But wait a minute. Was the Environmental Protection Agency directly involved in the sentencing of John Pozgai? Did Administrator William Reilly or any of his minions go to Judge Katz in Philadelphia and say to him, "Judge, throw the book at this guy, will you?" Of course not. Throwing the book at Pozgai was the U.S. Justice Department's idea. In a sentencing memorandum dated April 3, 1989, Michael Baylson, the U.S. Attorney for the Eastern District of Pennsylvania, and Assistant U.S. Attorney Seth Weber, the government's principal trial lawyer in the case, deplored "the systematic destruction of the nation's wetlands" and invoked the intent of Congress to make the statutory punishment fit the environmental crime. According to Baylson and Weber, the statutory punishment for John Pozgai could be stretched out to $10 million in fines and 120 years in jail, if only the judge would be good enough to apply sentencing guidelines to each of forty-one counts separately and cumulatively, rather than grouping them to determine the appropriate sentence. As it turned out, Judge Katz's sentence of three years (twenty-seven months before parole may be considered) and $202,000 was but a drop in the bucket compared to what the gentlemen from Justice had requested. Yet it was tough enough, relative to the gravity of the offense and the record of sentences for similar crimes in other jurisdictions, to move Paul Kamenar of the Washington Legal Foundation to argue, on appeal, that this particular sentence is an abuse of judicial discretion and a violation of the Eighth Amendment's guarantee against cruel and unusual punishment. The last word on all of this—or no word at all, and the sentence to be served—is up to the U.S. Supreme Court.

Once upon a time in Washington, D.C.—my version continues—there was a little man in a big house. And the house was white. The man was not physically little, nor was the measure of his influence small, for he happened to be a retired govenor and his title was Chief of Staff. The chief's stature was diminished only by the presence of that other fellow in the White House. The other fellow's title was President of the United States. We are referring, of course, to the chiefdom of John H. Sununu, in this period from our history known as the Presidency of George Bush.

When it comes to federal wetlands, there is no getting around John H. Sununu, is there? I mean that's what I've been reading in The Washington Post and The New York Times almost since the new administration announced that it would countenance no net loss of wetlands. Of course brooking no net loss of wetlands was not John Sununu's idea, was it? That kind of talk must have come from Bill Reilly over at EPA. If what I read in the newspapers is even half-true, Sununu is the sort of fellow who might well believe that when you've seen one swamp, you've seen 'em all. This is the same Sununu who is said by the media to have thwarted Bill Reilly's policy recommendations at almost every opportunity. The same who repeatedly refers to his critics as "environmental extremists." The same who ripped the guts out of an EPA-Corps of Engineers wetlands protection agreement by ordering the document modified to reflect the concerns of developers, oil companies, and others who felt it would unduly restrict their pursuit of free enterprise. The same Sununu who is listed in the 1988 annual report of the Washington Legal Foundation as ally and long-standing member of its National Board of Advisors. Small world, isn't it?

While we are still in Washington, let us not forget the U.S. Department of Justice, the very same that threw the book at John Pozsgai. After the Wall Street Journal lionized Pozsgai as a property rights martyr sacrificed upon the altar of environmental extremism the department's top resource lawyer, Richard B Stewart, joined federal prosecutor Michael Baylson in a letter of response. "You state," the two attorneys reminded the Journal, "that environmentalism and property rights are on a collision course. They are if one side refuses to acknowledge any limits. The same Constitution that creates property rights empowers Congress to impose limits for the benefit of all. If everyone followed Mr. Pozsgai's example . . . we would live in an anarchy, not a democracy governed by law."

This is good-sounding stuff to my ear. But at the same time it bothers me. Where do those limits begin and end? With Pozsgai? Is his the only wetlands transgression worthy of three years in jail? If America is truly losing almost half a million acres of wetlands annually, who and where are the other culprits? Pozsgai filled five acres, without a permit. What about the balance of the nation's loss of wetlands? Filled by permission? Much of it, alas, yes; but not all of if. Are there to be no hidden cameras, handcuffs, and early retirement to the federal pokey for any of the other violators who apparently refused to acknowledge limits on their property rights? But I forget. I forget that this is a Justice Department still suffering hangovers from the reign of Edwin Meese, another one of those environment bashers in the Sununu mold. I forget that this Justice Department, which now seeks to bankrupt citizen Pozsgai, is the same that, at the behest of the White House counsel, played possum on the issue of supporting stiff fines against corporate polluters.

So what are we to make of it all? Is this some kind of charade? Does the Justice Department play a willful or unwitting role in it by courting the backlash against tough wetlands enforcement? I mean, at a time when many congressmen and some judges must still believe in their heart of hearts that wetlands are wastelands and so-what's-all-the-fuss, was it really necessary to throw the whole book at Pozsgai and thereby play into the hands of those who would make a

martyr of the Morrisville mechanic? Charade, hell! Is this a conspiracy to tip wetlands protection right out of the Clean Water Act?

In Washington, I put some of these theoretical questions to John Pozsgai's pro bono defender, the conservative attorney Paul Kamenar. I was sitting in the offices of the Washington Legal Foundation, hopelessly outnumbered and surrounded, though elsewhere in the building, by individuals who would brook no shenanigans from a visiting journalist with exteremist social views. Therefore I did not invoke the name of their long-standing advisor, John Sununu. I merely posited the conspiracy theory as it might involve the Justice Department. Kamenar heard it out, listening politely and impassively to my presentation. And when at last I finished, you know what he said to me? He said: "The government's not that smart."

Fables are supposed to end with a Moral. But inasmuch as this is a fable without heros, perhaps it is also a fable without a Moral. Or perhaps it is not. Think about it.

Mr. GLENN. Mr. President, I would be happy to hold hearings on this. I am sorry that this came up as an amendment to this bill. We were not aware, as I said, until yesterday it was going to come up in this regard today. I just think it is premature to take it up this way, and it is a very, very far-reaching amendment that we are considering putting onto this bill. In its original single form, not as an amendment, it had 41 cosponsors. I do not know whether it has that many as an amendment to this bill, but I hope that some of those Senators, in looking at this, would also consider what is going to happen to health issues, safety issues, environmental issues, many of which have nothing whatsoever to do with the specific land property rights that are addressed in the statement on this bill on the floor today. I would commit to having the hearings if that is the wish. If we cannot prevail with that request, then I urge my colleagues to vote against the amendment.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from New York.

Mr. MOYNIHAN. Mr. President, I respond with great affirmation to the statement of the distinguished, gallant chairman, the Senator from Ohio, to say that, as manager of the bill, I very much regret that this quite extraneous issue came here. I hope that the body will accept the offer. It is obvious no one would ever have to require JOHN GLENN to state a good faith offer. If JOHN GLENN makes an offer, you can bank on it. I do not know whether that will be possible, but I would like to say to the chairman that that certainly would be my view.

If I could say to my friend from Idaho, the ever-patient Senator from Washington has been waiting to offer an amendment on behalf of his committee. I think it would require setting aside the amendment of the Senator from Idaho briefly.

So, Mr. President, I ask unanimous consent that the amendment of the Senator from Idaho be set aside for 5 minutes in order that there might be offered an amendment by the Senator from Washington.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 307

(Purpose: To add a new title II on highway safety)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself, Mr. HOLLINGS, Mr. DANFORTH, Mr. EXON, and Mr. BRYAN, proposes an amendment numbered 307.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the amendment (No. 307) is printed in today's RECORD under "Amendments Submitted."

Mr. GORTON. Mr. President, as the distinguished manager of the bill said, I offer this amendment on behalf of the Senate Commerce Committee and specifically Senators HOLLINGS, DANFORTH, EXON, and BRYAN, in addition to myself. This packet includes parts or all of three bills all directly relevant to the transportation debate in which we are engaged at the present time.

One dealing with drug and alcohol testing for transportation employees has already been passed unanimously by this Senate as a separate bill. The second is the reauthorization of the National Highway Traffic Safety Administration reported by the Commerce Committee which deals with a wide range of safety-related subjects, building on the success we have had in beginning to reduce at least the number of deaths by drunk driving, and motor vehicle safety in the field of small trucks, side protection and the like; and the Motor Carrier Safety Assistance Program reauthorization, also a program presently in law which funds more than 1½ million safety inspections of heavy trucks and buses.

Each year 45,000 Americans are killed and another 500,000 are hospitalized because of highway crashes. The National Highway Transportation and Safety Administration [NHTSA] has the lead Federal role in reducing this death and injury toll. According to the Department of Transportation, highway crashes cost the U.S. economy $75 billion annually. Highway crashes are the leading cause of death for Americans under age 45.

I am an original cosponsor of an important measure S. 1012, which has already passed the Commerce Committee. Today, we offer the text of this bill as an amendment to S. 1204. The amendment will require a number of important actions by NHTSA that will result in far safer vehicles being driven on our Nation's highways.

This amendment will require that all newly manufactured passenger cars have full front airbags by September 1, 1995, and that all light trucks have full front airbags 2 years later. This is a realistic schedule which most manufacturers already intend to voluntarily meet. The Department of Transportation estimates that universal installation of airbags would save 8,000 lives a year.

Our amendment will also require NHTSA to complete rulemakings on passenger car side impact protection and on light truck safety requirements. It also requires that auto manufacturers return to a 5-mile-per-hour bumper standard that existed before 1982. Our committee learned that today's 2½-mile-per-hour bumpers can sustain several thousand dollars' worth of damage in only a 5-mile-per-hour crash. This is an outrageous expense for a consumer involved in what should be a very minor accident.

Additionally, our amendment will require NHTSA to examine a number of important technologies which likely will increase auto safety including antilock brakes, daytime running lights, heads-up displays, and smart car/highway systems.

Mr. President, this is an important step forward in highway safety and I urge the Senate to adopt this important measure.

Mr. President, I really want to thank both managers of the bill for their courtesy in looking this over, for their determination that it is relevant to this bill, and for their agreement to propose it at this time.

Mr. MOYNIHAN. Mr. President, I would most emphatically state that these amendments are relevant to the bill. I think it is important that the Senator from Washington has mentioned the fact that we have unanimously passed the first of these measures but we never get it into statute. This bill is going to become a law. This bill is the tractor trailer that will carry this amendment forward to its destinations, which is the statutes of the United States. That is rather a large proposition, Mr. President, but it is my way of saying that on this side of the aisle we very much accept the measure and thank the Senator from Washington for offering it.

Mr. SYMMS. There is no objection on this side.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. GORTON. I yield back the remainder of my time.

Mr. BRYAN. Mr. President, as chairman of the Consumer Subcommittee, I am pleased that this amendment includes the text of S. 1012, legislation which I introduced and which was reported by the Commerce Committee without objection. This legislation is a

comprehensive reauthorization of the National Highway Traffic Safety Administration, or NHTSA. I am especially pleased to have as cosponsors of this legislation, my Commerce Committee colleagues Senators HOLLINGS, DANFORTH, GORTON, KERRY, and MCCAIN, all of whom have distinguished records of hard work and experience in the area of highway safety. This legislation is an important and appropriate addition to S. 1012, the highway bill, in that it authorizes the expenditure of the highway trust fund moneys administered by NHTSA, and includes measures that will significantly enhance the safety of our highways.

NHTSA's responsibility can be simply stated: to save lives. Obviously, nothing could be of greater importance, or more deserving of our attention and efforts toward reauthorization.

NHTSA's primary responsibility is to improve the safety of our vehicles and our highways. Since the agency was created in 1966, progress has been made. However, about 45,000 people still are killed on our highways each year, and motor vehicle-related injuries are the leading cause of death for children over 1 year old. Motor vehicle crashes cost the United States economy $74 billion each year. There can be no doubt that NHTSA, and those of us who consider legislation in this area, still have our work cut out for us.

As everyone who works on highway safety issues is aware, the effort to reauthorize NHTSA has been strenuous, but as yet unsuccessful. The agency has been without an authorization since 1982, despite the fact that the Senate has passed three separate bills during this time. In the last Congress, in March 1989, I introduced S. 673, which was unanimously approved by the Commerce Committee, and passed by the Senate on a voice vote in August 1989. Despite the early Senate action, the bill was not enacted into law.

The authorization legislation offered today as an amendment to the highway bill includes many of the provisions contained in S. 673. These issues include requirements that NHTSA complete rulemaking to improve the safety of passenger vehicles, including additional head injury protection and rollover protection.

I am pleased to note that there are some very important issues addressed in S. 673 that do not need to be addressed in this year's legislation because the rulemakings they would have required have been completed by NHTSA. These issues include improved side impact protection for passenger cars, and passive restraints and roof crush standards for light trucks.

In addition to issues addressed in earlier legislation, this year's legislation includes rulemakings on some safety issues that have evolved since S. 673 was first drafted, including air bags and antilock brakes. As improved technology becomes available and proven, we want to insure that it is provided for all consumers, and not just those who can afford luxury cars. In particular, with respect to airbags, this legislation will require that airbags be available in all cars and light trucks on a phased-in schedule. There now is general agreement that airbags with manual seatbelts offer occupants superior protection to any other system, yet NHTSA's current rules allow manufacturers to use either automatic seatbelts or airbags. While most manufacturers are moving toward airbags on their own, this legislation will insure that the installation of airbags will not vary from model to model, but will be available to all.

Additionally, this legislation contains authorizations for NHTSA's operations and research, and its programs funded out of the Highway Trust Fund, including programs established by sections 402 and 403 of title 23, United States Code, and impaired driving prevention grants to States. Section 402 provides funds to the States through a formula based on population and highway mileage to assist in highway safety through NHTSA-approved programs. Section 403 funds research in a number of safety areas, including intelligent vehicle-highway systems.

The operation and research funding and the section 403 program adopt the administration's requests for fiscal year 1992. The operations and research funding is increased by the inflation factor recommended by the Congressional Budget Office for fiscal years 1993 and 1994. The section 403 funding is the administration's request for fiscal year 1992, and identical amounts for four additional years. Since the administration's request for 1992 is a substantial increase over prior years' funding, no increases have been authorized for later years. The section 402 funding provides the 1991 authorized amount for fiscal year 1992, and increases this amount by the Congressional Budget Office inflation factor for an additional 4 years.

This legislation also replaces the two current NHTSA-administered programs of impaired driving prevention grants—sections 408 and 410 of title 23, United States Code—with one new program. The new program is structured in a manner identical to the current programs, but eliminates the overlap between the two, retains the most effective elements of each, and adds some additional measures that have been shown to be effective to prevent impaired driving. Incentive grants are provided to States to encourage such actions as prompt suspension of drivers' licenses of impaired drivers; sobriety checkpoints; mandatory blood alcohol intoxication levels of 0.10, decreasing to 0.08 in later years, and mandatory minimum penalties for those convicted of impaired driving

I believe this legislation is comprehensive and will provide important authorization and direction to this vital agency. All parties working on highway safety share the common goal of saving lives and preventing injuries. This measure will advance that process, and go a long way toward achieving these goals. I urge my colleagues to support it.

Mr. HOLLINGS. Mr. President, the amendment being offered today combines three measures approved by the Commerce Committee in this session: the Omnibus Transportation Employee Testing Act of 1991, the National Highway Traffic Safety Administration Authorization Act of 1991, and the Motor Carrier Safety Assistance Program Reauthorization Act of 1991.

The first section of the amendment includes language identical to S. 1012, the Omnibus Transportation Employee Testing Act of 1991, which is designed to prevent needless deaths attributable to the use of drugs and alcohol by the operators of our transportation systems. This legislation passed the Senate on May 20, 1991, and is essentially the same bill that Senator DANFORTH and I introduced in the 100th and 101st Congresses. Those bills were debated, reported by the Commerce Committee, and passed overwhelmingly by the Senate twice in the 100th Congress and three times in the 101st Congress. However, regrettably for transportation safety, the 101st Congress ended without an agreement with the House on drug and alcohol legislation. This Congress, once again the Commerce Committtee overwhelmingly has reported this bill, recognizing the need for drug and alcohol testing.

The need for this provision is clear. Countless accidents, already documented by the Commerce Committee, have occurred where the person responsible for the safety of the traveling public was found to have drugs or alcohol in his or her system.

DOT has issued a series of transportation testing rules and regulations. However, the regulations cover drug testing but do not include alcohol testing. Our amendment includes alcohol—another drug with serious consequences to safety. In addition, the drug rules covering mass transportation workers issued by DOT were struck down by the D.C. Court of Appeals in January 1990; the court found that the Urban Mass Transit Administration did not have sufficient agency authority to mandate drug testing. The amendment corrects that deficiency. We cannot afford to have millions of commuters each day subject to the risks of drug and alcohol abuse by the operators of the systems. Furthermore, enactment of mandatory drug and alcohol testing, including random testing, ensures that such testing will continue

despite possible changes in the administration officials charged with its implementation.

This amendment is eminently fair. It both mandates testing to protect the public and includes strong safeguards to ensure accurate testing and to protect innocent employees. These safeguards include a requirement that testing follow Department of Health and Human Services guidelines; that initial screening tests be followed up by confirmatory tests by laboratories that meet rigorous certification standards; and that the confidentiality of the results and medical histories be protected. It is also multimodal, covering the rail, aviation, motor carrier, and mass transit industries.

Mr. President, those who drink alcohol and/or use illegal drugs have no business operating a train, plane, truck, or bus. They have no business assuming responsibility for innocent lives. I know the vast majority of transportation workers do not abuse the trust we place in them, but we cannot take the risk that a few of their colleagues do not share their dedication and professionalism.

The second part of the amendment is the reauthorization of NHTSA, which was unanimously reported by the Commerce Committee in May. We all know how important this Agency is to preventing highway deaths and injuries. Since approximately 45,000 people still die every year in highway accidents, it is clear that this agency's work must continue, and must have the strong support of the Congress.

This legislation is similar to S. 673, which was unanimously reported by the Commerce Committee in the last Congress. Although the Senate passed S. 673 on a voice vote early in the session, the House did not consider the bill, so we must begin the process again.

The bill includes authorizations for all NHTSA's programs, including the important 402 grants to the States, and a revamped and streamlined program of incentive grants to the States to prevent impaired driving. As HHS Secretary Sullivan recently stated, about two in every five Americans will be involved in an alcohol-related crash at some time in their lives. Clearly, this part of NHTSA's work must continue to be given high priority.

This amendment properly addresses the priority items necessary to make our highways as safe as possible for the driving public. It authorizes the work of an important agency. It has the unqualified support of consumer and highway safety advocates, as well as major insurance companies. I urge my colleagues to support it, as they have supported similar legislation in the past.

Finally, Mr. President, the amendment reauthorizes the Motor Carrier Safety Assistance Program [MCSAP]. MCSAP was created in 1982 and provides grants to States for roadside inspections of commercial vehicles and drivers, as well as safety audits at the terminal of truck and bus companies.

This amendment will continue the existing program which is widely regarded as a successful Federal-State partnership, by making some modifications intended to better direct the program toward the cause of accidents involving commercial motor vehicles. The amendment increases the MSCAP funding levels and includes certain programmatic changes that States must make in order to qualify for MCSAP grants. The amendment strengthens the program beginning with fiscal year 1993 by requiring a State to strengthen enforcement in a number of areas such as: Drug interdiction; drug and alcohol enforcement; the commercial drivers' license program; traffic safety enforcement in relation to commercial vehicle safety; and hazardous materials efforts.

Other provisions include initiatives designed to establish a drug-free zone around truck stops by doubling the penalty levels for those persons convicted of selling drugs within 1,000 feet of a truck stop. DOT is also required to conduct a rulemaking on the need to adopt methods for improving truck braking performance. Finally, the amendment seeks to deter violations of out-of-service orders by developing a penalty structure for these actions.

Mr. President, I urge my colleagues to accept this package of transportation safety amendments.

Mr. EXON. Mr. President, I join the chairman of the Commerce Committee, Senator HOLLINGS, and other Members, in support of the package of amendments being offered today by the Commerce Committee. As a member of that committee I fully support the provisions of this amendment dealing with employee drug testing as well as the reauthorization of the National Highway Traffic Safety Administration [NHTSA]. As chairman of the Surface Transportation Subcommittee which developed the language in S. 631 to reauthorize the Motor Carrier Safety Assistance Program [MCSAP], I would like to expand my support of this vital program.

MCSAP is one of the largest and most successful Federal and State partnerships designed to improve truck safety. This program provides grants to States for roadside inspections of commercial vehicles and drivers, as well as safety audits at the terminals of truck and bus companies. MCSAP currently funds 1.15 million roadside inspections and about 10,000 safety audits annually. This amendment authorizes funding for MCSAP of $65 million for fiscal year 1992; $70 million for fiscal year 1993; $75 million for fiscal year 1994; $80 million for fiscal year 1995; and $85 million for fiscal year 1996.

In order to receive money from MCSAP, States must designate a lead agency to administer the plan, implement uniform methods for record keeping and inspections, and participate in data bases on drivers, vehicle inspections, and traffic accidents. The amendment encourages increased enforcement beginning in fiscal year 1993 in various areas, particularly, traffic enforcement efforts, as well as compliance with the CDL Program.

In conclusion Mr. President, I would like to acknowledge the extraordinary efforts put forth by Senators BURDICK and MOYNIHAN in their leadership of the highway bill and urge my colleagues to accept this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 307) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. I thank both Senators for their courtesy.

Mr. SYMMS. Mr. President, I also thank the Senator from Washington for his patience. He has been waiting for quite sometime today and I am glad that we could get him accommodated.

AMENDMENT NO. 306 TO AMENDMENT NO. 305

Mr. SYMMS. Senator GLENN made some comments and I just want to briefly set the record straight. First off, private property in no way can ever do anything. There is no private property right in this country to do anything to harm anybody's health or safety. So that is something Senators do not need to worry about.

What this amendment does is it says either the Government agencies comply with the Executive order or they issue another procedure. It is very clearly written in the amendment in that fashion. I will just read the text. It says:

> No regulation promulgated after the date of enactment of this Act by any agency shall become effective until the issuing agency is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity with the goal of minimizing such where possible.

So it is not that complicated.

With respect to Senator GLENN'S comments about the hearings—and I want the record to show that there is no Senator in this Chamber that is more a personal hero to this Senator than JOHN GLENN is—I went to the committee. I requested hearings. We worked with Senator KOHL and as of last week Senator KOHL suggested to me that the subcommittee did not choose to have hearings on it and that

they would prefer that I go ahead and bring the amendment to the floor in view of its overwhelming support, some 64 organizations—and some 41 Senators and many others have told me they intend to vote for it—to just go ahead and bring it up and have the vote and settle it. We now have this Executive order. I think from talking to Senator MOYNIHAN we are ready to go ahead and go to a vote.

Mr. President, I ask that the amendment be agreed to.

The PRESIDING OFFICER. Is there further debate?

Mr. SYMMS. Mr. President, before we go to a vote, I will just retain my right to the floor for a moment until Senator MOYNIHAN gets back. Senator MOYNIHAN thought we would just go to a vote. But there are some discussion points and I will start on those until Senator MOYNIHAN returns to the floor.

One of the questions that comes up is we do not need the Private Property Rights Act or amendment because, when compared with problems of hunger, housing, crime, unemployment and other issues, property rights is just not that important.

First, I would say, Mr. President, that those issues of hunger, housing, et cetera, cannot be solved without private property. Furthermore, the argument ignores a critical chapter in American history.

In the Boston Town Meeting in 1772, they called together a committee. Because they were feeling especially harassed by King George, they asked the committee to "State the rights of the Colonists * * * as men, and as subjects; and to communicate the same to several towns and the world." The chairman of that committee was a great American patriot, Samuel Adams. Sam Adams took 2 weeks to write his Treatise on the Rights of Man, and he began his task with the declaration that: "The absolute rights of Englishmen and all freemen, in or out of civil society, are principally personal security, personal liberty, and private property."

Throughout the succeeding revolutionary period these three rights were time and time again recalled—life, liberty, and property. They appeared in article 1 of the Bill of Rights of Virginia and in that same article in the Bill of Rights of Massachusetts. They eventually were written that way in the fifth amendment of the Constitution.

It was only in drafting the Declaration of Independence that Thomas Jefferson slightly altered the phrase to read, "life, liberty, and the pursuit of happiness."

In later years he explained why he chose those words. It was not because he felt the right to pursue happiness was somehow more important than the right to private property. Rather, he explained, "A right to property, is founded in our natural wants, is the means with which we are endowd to satisfy those wants." To Jefferson, the pursuit of happiness, the satisfaction of our wants, as he put it, and private property rights, were inextricably linked.

Anyone who has ever been to Monticello, Jefferson's home outside Charlottesville, VA, will immediately understand why Jefferson saw private property ownership and "the pursuit of happiness" as one and the same. Monticello is nothing less than a work of art. Jefferson himself surveyed the property, laid out the building plan, designed his home, surpervised the construction, and tended its extensive pathways and gardens. He loved his property, not out of selfishness or materialism but as an artist who takes pride in knowing he has mixed his work, his blood, sweat, and toil with the land and produced something totally, truly admirable.

Two centuries later the institution of private property has lived up to Jefferson's expectations. America's agriculture productivity, leadership in medical and engineering technology, the wealth of entrepreneurial opportunity, can be traced to the incentives inherently created by private property rights. It is truly the means through which we pursue happiness.

So I put it to you, Mr. President, that it would be simply incorrect for anyone in criticizing this amendment, which has broad sponsorship in this body, to say that private property rights are just not as important as many other issues pressing Congress today.

Mr. President, another criticism that has been raised by the critics of this amendment: We do not need the Private Property Rights Act because no one's private property is really being threatened. That is an objection we often hear. We would have a hard time making that argument with many of the farmers and ranchers in this country who have run across the wetlands issue, who have tried to improve and fix their property and find out that they are having it literally taken from them by the big hand of Federal Government.

We would really have a hard time making that argument to John Pozsgai of Morrisville, PA, a Hungarian immigrant and self-employed mechanic. John decided to exercise a right that had been denied him in his native Hungary, Communist Hungary. In 1987 he purchased a few acres next to his mechanic's shop. The acreage had been used for 30 years as an illegal dump, filled with old tires and rusted auto bodies. He removed the refuse and replaced it with clean fill in order to improve the appearance and value of his property.

Guess where John is today? He is in prison. He is serving a portion of his 3-year prison sentence while his family is strapped by a $200,000 fine. What was his crime? The garbage dump that he cleaned out was found to be a wetland, and by filling in the area with clean dirt without a permit from the U.S. Government he violated the Clean Water Act regulations. That is what Mr. Pozsgai had to say in his defense. "We thought this was a free country. You buy a piece of land and you use it."

Or what of the family in Colorado, fined for objecting to the fact that the Corps of Engineers had placed levees on a river in such a way that the river channel was diverted onto their property? In order to reclaim their farm they built some levees of their own, restoring the river to its original channel. For their effort they were fined by the Corps of Engineers the paltry sum of $45 million. Yes, that is what I said, $45 million.

There are hundreds of cases like these around the country. But we do not need to rely on these kind of anecdotal stories.

Consider the hard numbers. In 1990 alone the Federal Government issued 63,000 pages of fine print regulation on the use of private property. It is not hard to imagine that some of that regulation places severe limitations on property use. There is no question about it; it does if the property owners feel a regulation has gone too far, that their property rights have been taken without compensation.

Oh, yes, for those who say we already have the fifth amendment, that is true. We do have the fifth amendment, so we can sue them. But you better have a giant bankroll if you have to take on the Federal Government in court, if you have to sue the Federal Government in order to establish your right to private property.

As a matter of fact, in many of the cases, the property rights owners win the cases when they are able to take on the Federal Government. The U.S. Government is currently facing well over $1 billion in such outstanding takings claims. Just in 1990 alone several of the largest taking judgments in the history of the United States were handed down by the U.S. Claims Court with the single largest judgment of all time—the Whitney benefits case totaled nearly $120 million—being affirmed by the Federal circuit as recently as this past February.

In California, property owners who can afford legal costs are winning at least half of their cases, if not more, of the taking claims cases before the intermediate appeals court. According to a recently released report by the Congressional Research Service, property owners won regulatory taking cases before the Federal courts in 1990 more often than not.

Astonishingly, what astonishes me, is the Federal Government wins 9 out

of 10 times in other areas of law but they are losing on these cases, these 63,000 pages of regulations. As President Bush has said and as Vice President QUAYLE has said, as Attorney General Thornburgh is saying to Congress, the administration needs this regulation to get a procedure down that will protect the rights of property owners in this country so they can in some way rein in the head of this huge Federal bureaucracy that is issuing 63,000 pages of regulations. That is all this simple amendment does.

I might say that is why some of the finest lawyers in this Senate are sponsors of this amendment. When I look through the list, some of the finest attorneys: Judge HEFLIN sponsors this amendment—I can go down the list: BOND, BOREN, BREAUX, BROWN, BUMPERS—Senator SPECTER, for example, one of the most respected attorneys; the former attorney general from Washington State, Senator GORTON, sponsors this amendment. This amendment has had a lot of very fine legal minds look at it and they have said this needs to be agreed to, not the least of which is the Attorney General of the United States, who wants this agreed to. The Vice President of the United States and the President of the United States are solidly behind this amendment.

Another criticism we often hear, we do not need the Private Property Rights Act because we already have a fifth amendment. It has always been the case that when Americans feel that the Government has failed to respect their basic constitutional rights, they may sue, demanding that their rights be honored. As a matter of equity, however, we have never held that rights should only be extended to those who can afford to sue the Government for them. The cost of legal action is not small.

As I said earlier, it could be in excess of $40,000 to $50,000 up front to start a lawsuit against the Federal Government. The disturbing fact brought out by the recent trend in the courts is this: Those property owners who can afford this cost win more often than not, but those court victories actually represent only a small fraction of those whose rights have been usurped. Those who cannot afford to sue currently have no protection of their property rights if they come in conflict with a regulation. That is why we need a process to have these regulations be in concurrence with a system which will protect the rights of property owners.

This is why this amendment is so important. By building private property rights considerations into the regulatory process in the first place, the rights of all Americans—not just the wealthy Americans—are protected. It is not enough to say "but we have the fifth amendment." That is not enough. The duty of protecting and preserving the constitutional rights of Americans does not fall on the individual. It is a duty of all of us here in this Congress to see that those individuals are protected; whether they be rich or poor, big or small, they are in a position that their rights can be protected.

Another argument that I hear so much of, argument number four that I have heard, if private property rights are respected, vital protections for public health and the environment will be undermined. I spoke briefly to that earlier. Senator GLENN mentioned it. This argument would not even be raised if private property rights were truly understood by Americans. No one who owns private property in this country has the right to jeopardize someone else's life, liberty, or property.

Your private property stops at the end of my nose, so to speak. I think that is the way one great American put it, one great jurist. You cannot expect that.

As Justice William Henry Moody, a Franklin Roosevelt appointee to the Supreme Court, noted:

> Our social system rests largely on the sanctity of private property; and that state or community which seeks to invade it will soon discover the error in the disaster which follows:

That disaster may include destruction of our environment, for, as surprising as it may be, private property is the world's most powerful force for environmental protection. The current EPA Administrator who, in my view, is one of the strongest advocates for a good clean environment that this Nation has ever had in that position and a highly respected advocate of a cleaner, better, safer environment, Bill Reilly, the Administrator recently noted on returning from a trip assessing the environmental damage in Eastern Europe, "Many environmental principles are undefendable in the absence of private property."

I think just last week I saw him on TV saying that if hell had a national park, he had just seen it in Kuwait City where there was absolutely no respect for private property under forces of Saddam Hussein that went in and torched the wells. Anyone who had his own well there and was protecting it certainly would not have done what Saddam Hussein's forces did.

I will repeat again what Bill Reilly has said, "Many environmental principles are undefendable in the absence of private property."

His observation, Mr. President, can easily be explained by the old proverb:

> Give a man the secure possession of a bleak rock, and he will turn it into a garden; give him nine years lease on a garden, and he will convert it to a bleak rock.

I think we all know that. The principle is true. It is private property ownership that makes an owner care about the quality of his environment, that creates a true sense of stewardship for the land and its resources. The American environmental community, at its grassroots level, is nothing more than a coalition of private property owners who want to defend their private property rights from pollution and degradation of their neighbors and their government. Undermining private property rights through excessive regulation will not foster greater environmental protection.

Mr. President, another criticism that I hear often, and I will state a rhetorical question brought up: There are those who argue that the Private Property Rights Act is just too much hassle for our Federal agencies; that it will force them to spend too much time considering the impact of their regulations on private property, and not enough time on regulating.

Well, la-dee-dah. If that does not take the cake. With the Federal Government out there regulating, dictating, telling everybody what to do who is running a small business, and that is our concern.

First, let me say this from a factual standpoint. The administration has reviewed the text of this language. This administration argues strongly against that statement. According to the Attorney General—I quote from his letter of last October in which the EPA, the USDA, the Department of Interior, and the Corps of Engineers concur with:

> It is suggested that this proposal would add a bureaucratic roadblock to executive enforcement. This is incorrect * * * the [bill] does not preclude an agency from meeting its statutory obligations, including enforcement responsibilities. It is inaccurate to suggest that this proposal would afford * * * "yet another basis" to challenge agency performance of their statutory responsibilities by creating an "additional bureaucratic roadblock." To our knowledge, [the existing review of regulations], which would not be affected by your proposed [bill]—

Which is this amendment—

> has never resulted in any obstruction of any agency's performance of statutory responsibilities. In short, nothing anything the [bill] you have proposed would create additional burdens for agencies currently complying with the Executive order.

Obviously, the Government agencies themselves do not believe what we are asking would be too much hassle. But for me, I do not even need that reassurance. If you ask a regulatory agency to take on a little extra hassle in order to protect the private property rights of the small little citizens in America who are fortunate enough to own some property—our Government does not exist for the Government's convenience; our Government exists for the convenience of the people of the United States. That is why we have a government. The people gave the Government certain rights. One of those is to protect them and other peoples' ability to own and have private property.

If private property rights are important, then the hassle would be worth it. It just brings us full circle back to the question: Are private property rights important?

Mr. President, I submit that the best statement I could make to that would be a poll that was recently conducted by the Soviet Academy of Science. When you ask young Russians what it is that they really want, what rights or what freedoms they are most eagerly seeking, this is what they said:

"Do you want complete freedom of the press, radio and TV?" The answer is yes, 58 percent; no, 36 percent.

"Do you want Russia to be able to govern itself, and secede from the U.S.S.R.," from the Soviet empire? Yes, 70 percent of the Russians wanted that; 19 percent no.

"Do you want a form of government other than socialism?" Yes, 74 percent; 17 percent, no.

Get this one, Mr. President:

"Do you want private ownership of land?"

Yes, 85 percent; 85 percent of the Russian people want private property ownership more than any other one freedom that they are asking for—think about it—more than the right to the free press or television, more than the right to self-government, even more than the right to extract themselves from under the yoke of socialism. The upcoming generation of young Russians are demanding one thing: private property. They want above all else to own their own property, their farm, their car, their apartment; they want something that is theirs, to care for, to prosper, to build, just as Thomas Jefferson did Monticello, exactly the same thing he did with Monticello, when he noted, to "pursue happiness" by putting their work, their effort into something that belongs to them. He totally understood that with his love for Monticello.

Even if the administration did not believe that the Private Property Rights Act does not impose too much regulation burden on agencies—which they do not; they do not think it is too much of a burden—I would say, "So what if it is a burden on the bureaucrats? What about the people in the country that have granted their tax dollars and the right of Government to exist? What about them?

So I say, Mr. President, as Senators and Congress, along with the President, his Cabinet, and Government officials, we are sworn to defend the constitutional rights of Americans, not our Government's own convenience. If it takes a little more hassle to get respect for constitutional rights, then that hassle is certainly well deserved.

The only man to ever serve this Nation as both President and then Chief Justice of the United States, Chief Justice William Howard Taft described private properties rights this way:

Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution and the one which, united with that of personal liberty, has contributed more to the growth of civilization than any other institution established by the human race.

Mr. President, President Taft, Chief Justice Taft, in my view, is correct. There is no amount of administrative difficulty that is so great that it requires us to run roughshod over the private property rights of Americans. The work required of the executive agencies to ensure they are not usurping private property rights is well worth it.

Mr. President, I see some of my colleagues in the Chamber who wish to speak on this amendment, and I yield the floor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise in opposition to the amendment offered by my friend and colleague from Idaho.

Much of what the Senator from Idaho has said about private property rights this Senator—and I presume every Member of the Senate—can agree with.

Clearly, the central event of our time has been the collapse of communism, the collapse of centralized, state-controlled government and economy. I think we can all celebrate the right that we have in this country to private property as people elsewhere in the world, particularly in Eastern Europe and the Soviet Union, strive to achieve that right.

But one of the hallmarks of our system of government is a balance that no right is absolute. I want to respectfully suggest that this amendment takes the tried and true and much revered, much appreciated, much valued, much protected, right of private property in this country and would use that theory to obliterate a host of other rights we have such as the right to due process, the right to be safe, healthy, and free, to be protected by a government of laws that we must depend on because we cannot always protect ourselves.

Mr. President, the Constitution establishes a very fair principle in the fifth amendment that when the Government takes private property there ought to be just compensation. There is a pretty clear line of decisions that establishes what private property is.

There are some decisions which are on the margins in the courts that have begun to raise the question of whether some of the kinds of actions my colleague from Idaho is worried about by regulatory bodies do sometimes affect private property rights, but that is a developing peripheral body of case law that much more appropriately ought to be left to the courts to decide before we come aggressively in through this legislative process and mandate a series of requirements on our Government that I think will effectively and dramatically limit its capacity to protect us, protect our environment, protect our health, protect our safety.

This amendment has major implications for the ability of all agencies of the Federal Government to issue regulations affecting our health, welfare, safety, and environment in a timely manner.

It also has major implications for the very fundamental notion of the separation of powers in America because, in essence, it shifts authority from determining what constitutes a taking of private property from the judicial branch where it has been for a couple hundred years now to the executive branch where it does not belong.

The amendment fundamentally changes the remedies which are available for government actions which constitute a taking. Under the amendment, the remedy for government action which does not comply with the internal executive guidelines on takings is as follows:

First, the regulations cannot be effective. That is pretty serious stuff.

Second, if the regulation is promulgated, an aggrieved party can challenge the action on the grounds the agency has not been certified as in compliance with these internal guidelines. In other words, regardless of whether or not an actual taking has occurred, regulations in a whole host of areas that means so much to the quality of our lives, consumer protection, environmental protection, citizen protection, can be held up and invalidated because agencies do not follow procedures issued by the Department of Justice.

Those are significant issues, Mr. President. And they are significant public interests and rights on the line here which must be considered very, very seriously before Congress legislates in this area.

The bill of the Senator from Idaho has been referred to the Governmental Affairs Committee, and I agree with the distinguished chairman of our committee, the Senator from Ohio, that our committee should have an opportunity to hold hearings on the bill.

I personally have grave doubts about the need for this amendment. The fifth amendment to the Constitution provides a remedy for those who believe they have been injured by a regulatory decision. They can seek restitution for damages in the U.S. Claims Court.

I know the Senator from Idaho and some of my other colleagues are concerned that the Federal Government's regulatory actions are crossing the line now into the "taking of private property." But again, Mr. President, the fifth amendment already provides a remedy in the form of monetary compensation for those instances where the

Government's regulatory actions already do justify compensation.

The Executive order on takings which has been issued asserts that recent court cases have found that entire governmental regulations may result in a taking.

Mr. President, this indicates to me the court system is working. The courts are dealing with this issue. The judicial branch of Government is the proper branch to determine whether or not compensation is required.

One of the most troublesome aspects of this amendment is the openended and blanket authority granted to the Attorney General. This amendment requires agency compliance with the Executive order on takings or "similar procedures to assess the potential for takings of private property." Under this amendment, the Attorney General can impose any new set of unknown procedures on affected agencies. No health or safety regulations on which the American people depend could be put into effect until the Department of Justice sanctioned that they comply with some new test.

It is my understanding that the Department of Justice today has not certified that EPA's guidelines on takings are in compliance with the Executive order. So under this amendment, environmental health regulations could not become effective until this certification is made. That means regulations under the Clean Air Act we adopted last year could be delayed for a significant period of time.

The short of it is that this amendment means lengthy delays in the promulgation of thousands of regulations that affect public health, safety, defense, welfare, and the environment—regulations that are issued pursuant to laws we have adopted.

Even after the Department of Justice certifies an agency's procedures are sufficient, the delay in promulgation of regulations may not end because this amendment states no regulation can be effective until the agency is certified "to be in compliance" and that means the Department of Justice could at any time decide to conduct a review of any agency's regulations to determine if the agency is in compliance.

Private parties who disagree with an agency's actions could petition the Department of Justice to review those actions for compliance with the Executive order or other similar procedures.

This amendment therefore opens the door to an awful lot of mischiefmaking and obstruction of the actions of the Federal Government well beyond the ample provisons of due process and rights of parties affected that are already in the law.

Mr. President, I have no doubt this amendment is well-intentioned, but its implications for the separation of powers between the branches of the Government, its implications for the historic system we have developed in this country, which is so unique, and may I say to my friend from Idaho, in itself so distinct from what has existed in Communist countries, where they have not cared about the environment, they have not cared about public health—these regulations would be frustrated by this amendment.

So I hope the Governmental Affairs Committee will be provided with an opportunity to consider the principles underneath this legislation, that we not legislate on this very important issue as an amendment to the highway bill, and that we not create a system that will make it very hard for Government to protect people, which is what I think the people want our Government to do.

I thank the Chair. I yield the floor.

Mr. BAUCUS. Mr. President, last year I voted for an amendment on this subject which is offered by the senior Senator from Idaho [Mr. SYMMS]. That is because I genuinely support efforts by the executive branch to reduce the chance that Federal regulatory action result in findings by the courts that there has been a taking of private property.

The amendment offered last year applied to regulations promulgated under the authority of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, and the Administrator of the Environmental Protection Agency.

Now, however, the Senator from Idaho has brought it so it now applies to regulations promulgated by "all executive branch agencies, including any military department of the United States Government, and United States Government corporation, United States Government-controlled corporation or other establishment in the executive branch of the United States Government."

Quite frankly, the broadening of this amendment to include worker safety regulations under OSHA, and food, drug, and product safety regulations under the FDA, to name just a couple of new areas covered by this amendment, has prompted me to reexamine this amendment, and I urge my colleagues to do the same.

After now having looked at the broad implications of this amendment, I have concluded that it should be rejected.

First, this amendment would codify an Executive order on "Governmental Actions and Interference with Constitutionally Protected Property Rights," which was issued in the final year of the Reagan administration.

The amendment prohibits any regulation by any Federal agency from going into effect until the Attorney General has certified that the regulation is in compliance with the Executive order or similar procedures.

There are a number of very serious problems with this approach.

The amendment legislatively sanctions the content of an internal, executive branch document, of which the Congressional Research Service concluded the following:

> First that the majority of takings principles stated or implied in Executive Order 12630 overstate the likelihood of a taking, and that the order does not list most of the factors that cut against the occurrence of a taking. Second, there appears to be no justification in Federal taking jurisprudence for the added demands imposed by the order on Government actions aimed at protecting public health and safety. Finally, by explicit text and practical effect the order has the potential to burden implementation of Federal Government programs.

EPA's general counsel strenuously objected to the order as "hopelessly vague and dangerously overbroad" when it was circulated within the Reagan administration.

The second reason that the amendment should be defeated is that it writes the administration a blank check. It prohibits any regulation from going into effect unless it is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures.

Enactment of this provision will allow Attorney General Thornburgh to veto any Federal regulation that he considers to be out of compliance with the Executive order. That's overly broad authority in itself.

But the amendment goes further. It also would allow Attorney General Thornburgh to veto any regulation that he finds not to be in compliance with any procedure that he determines to be similar to the order.

Moreover, the amendment does not limit adoption of takings procedures to a one-time certification by the Attorney General. The Attorney General could revoke certification at any time and regulatory proceedings within an agency could grind to a halt.

Third, there is no provision in the amendment for public participation in either development of procedures or the certification process, or for judicial review.

Fourth, if Congress were to enact this amendment, it would be sending a strong legislative signal that the regulatory programs which are at the heart of a host of many Federal statutes might constitute a taking even though the Supreme Court has ruled otherwise. This could seriously erode the strength of laws and regulations designed to protect public health, safety, and the environment.

The AFL-CIO urges the defeat of this amendment, calling it "a dangerous attempt to completely ignore health and safety, labor, and environmental laws."

The Clean Air Act, the Clean Water Act, the Solid Waste Disposal Act and Superfund require EPA to issue regulations controlling pollution in a manner that protects the public health and safety.

The order, and its codification by this amendment, allow regulations to be promulgated only "in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety programs."

The use of the terms "substantial", "significant", and "no greater than necessary," without further clarification will only serve to hamper legitimate efforts to protect the public health and safety, to protect our workers, and to protect the environment.

Mr. President, for these reasons, I urge my colleagues to reject the amendment.

Mr. President, I also ask unanimous consent that a list of environmental regulations affected by the Symms amendment be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LIST OF ENVIRONMENTAL REGULATIONS AFFECTED BY THE SYMMS AMENDMENT

CLEAN AIR ACT

Acid rain allowance system.

National parks protection (visibility).

Application of new source performance standards and new source review (related also to WEPCO).

Any health-based regulation establishing or controlling emissions of criteria pollutants, including lead, sulfur dioxide, ozone, and particulate matter.

All regulations to limit emissions of hazardous air, pollutants, substances that deplete the ozone layer, and greenhouse gases.

Municipal incinerator standards.

RCRA

Underground tank financial responsibility.

Corrective action requirements.

Landfill requirements.

Recycling requirements.

Underground injection limits on oil and gas production.

ENDANGERED SPECIES ACT

Listing of species as threatened or endangered.

Designation of critical habitat.

Prohibitions on killing or harming listed species.

CLEAN WATER ACT

Section 404 limitations on wetland filling.

Non-point source controls.

Effluent guidelines.

Pre-treatment requirements.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I oppose the amendment offered by Senator SYMMS. A version of this amendment—offered during consideration of the farm bill—was defeated last year. I hope that my colleagues will again vote against this amendment. I believe it is unnecessary and unwise.

First, let me take a moment to speak to the underlying issue which the Symms amendment purports to address. That issue is whether the fifth amendment of the Constitution provides property owners with adequate protection against governmental takings of their property. Takings law has been determined largely on an ad hoc basis. That body of law seeks to define where the public interest collides with the rights of private property owners. While society imposes innumerable rules and regulations on individuals, it is clear that, under the Constitution, in most cases, where Government action denies a property owner all economically viable use of his property, that property owner is owed just compensation. In several cases, however, the Supreme Court has made it clear that Government restriction of property uses which threaten public health and safety are not likely to be grounds for a taking.

The purpose of this amendment is not to clarify what constitutes a taking. The purpose of this amendment is to ensure agencywide compliance with an Executive order addressing the potential for governmental actions to interfere with constitutionally protected property rights.

I truly do not understand why Congress is getting involved in this interagency issue. The Executive order, signed by President Reagan in 1988, is in place and Federal agencies are already bound to comply with it.

I understand that the amendment is designed primarily to get four Federal agencies—the Department of Labor, the Department of Health and Human Services, and the Department of Agriculture, and the Environmental Protection Agency—to develop supplemental guidelines in order to comply with this Executive order. I am not sure where this process stands for all of these agencies. But in the case of EPA—an agency that has never been found guilty of a taking—a final draft of EPA's supplemental guidelines is complete, has received favorable review by the Department of Justice, and is likely to receive final approval in the near future. So, these agencies are currently working with the Department of Justice to get these guidelines finalized.

The Symms amendment asks Congress to empower the Attorney General, by giving him the authority to bar the effectiveness of any new regulations, in order to force executive branch compliance with the Executive order. As far as I can see, once Congress passes on this authority, there is no way, short of enacting another law, to get it back. Thus, by providing that the Attorney General can keep all new regulations promulgated by any agency that is not certified from going into effect, this amendment creates potential for trouble.

Under the Symms amendment, the Attorney General can stop all new regulations from going into effect from the EPA, and the Departments of Labor, Health and Human Services and Agriculture or any other agency, U.S. Government Corporation, or other establishment in the executive branch simply by withholding his certification of their compliance with this Executive order or similar procedures.

In a letter to Senator SYMMS, Assistant Attorney General Richard Stewart interprets "or similar procedures" to refer to procedures "that might be issued by the President in the future to modify the Executive order. * * *" Now wait 1 minute. Does that mean, that if President Bush or any one of his successors comes up with a new procedure to modify the current Executive order, the Attorney General could revoke his certification and shut down any new regulations about to go into effect for any agency? This amendment seems to allow a future administration to revoke certification and wreak havoc.

Further, while the Symms amendment's definition of a taking of private property is consistent with the requirements of the Constitution, the descriptions of potential takings in Executive Order 12630 are widely perceived as creating a bias against actions to protect public health and safety. A Congressional Research Service report on takings contains the following comments on the Executive order:

> At the very least, many of the order's principles and criteria unquestionably overstate the risk of taking, while neglecting to mention any of the factors cutting against the existence of a taking. Moreover, the order appears to single out government actions to protect public health and safety for special restrictions, though these are the very actions that are least likely to be found to effect takings.

Richard Stewart describes the Symms amendment as a statutory endorsement for Executive Order 12630. Is the Senate ready to make that endorsement? There have been no hearings on this issue. The amendment is opposed by the chairman of the authorizing committee, the Committee on Governmental Affairs, who has not had a chance to consider this legislation. And, the content of the Executive order is extremely controversial.

Mr. President, I fully support the rights of private property owners and am committed to upholding the integrity of the U.S. Constitution which provides for just compensation when a Federal action amounts to a taking. I believe the Symms amendment to be unnecessary and fraught with potential problems. I hope my colleagues will look closely at its content, not just its title, and join me in voting to oppose it.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I would like to take a few moments to make some general comments on the bill before us, S. 1204.

First of all, I want to thank Senators SYMMS and MOYNIHAN for all of their

hard work on this piece of legislation and for their willingness to listen to individual Mconcerns.

I met with Senator SYMMS prior to the committee markup regarding my concerns with their original bill, S. 965. And I know that some of my other Western colleagues met with Senator MOYNIHAN to discuss similar concerns.

Both of them were very accommodating. I want to specifically thank them for increasing the Metropolitan Planning Organization [MPO] population threshold to 250,000 from 50,000.

While I still find some of the MPO requirements burdensome to smaller States like mine, their accommodation is a vast improvement over the original proposal and I thank them for that.

I rise specifically today to express my support for S. 1204, the Surface Transportation Efficiency Act of 1991.

I am very supportive of the flexibility provided in this bill. I truly believe that each State will be able to meet its transportation needs if S. 1204 becomes law.

In addition, the leeway that this bill gives States in setting standards for its secondary roads is a major step forward in my opinion. This provision alone will benefit rural States that will be able to stretch their highway dollars further because they would not have to meet costly Federal standards.

I trust States' ability to build safe, adequate farm-to-market roads, and commend the authors of S. 1204 for allowing them the freedom to do just that.

Finally, I would like to address the hot issue of the day—funding allocations.

It is no secret that Montana does well under S. 1204—especially in comparison to Senator WARNER's bill. And I support that.

However, I would also like to point out to those who have spoken in opposition to S. 1204's funding allocation that large States and less populated States deserve a fair share of the Federal dollars.

In most cases, we have larger land areas to cover and a small population base from which to draw funding.

Currently, Montana spends $354 on its highways for every State resident, placing it ninth among all States in per capita spending on highways.

In order to raise additional dollars on the State level, Montana would have to raise its gas tax 10 cents in order to generate the same amount of revenue that a 1-cent gas tax would raise in Virginia. In comparison to Florida, that ratio increases to 20 to 1.

A 1-cent gas tax in Montana only raises $3.9 million—compared to $33.2 million in Virginia or $61.4 million in Florida.

If Montana's Federal share is reduced, either our roads go unfunded or Montanans will have to pay astronomical taxes on their gas.

Is that fair? Especially when more populated States have the ability to raise more revenue with relatively little pain. Why shouldn't they be asked to contribute more to their own highway needs on a per capita basis?

I would also like to point out that it is the larger population centers that depend on States like Montana for the resources they need to meet the basic subsistence of life—their food and fiber.

Raw materials must move out of Montana to urban centers. Commerce must move through Montana to urban center.

Montana and other rural States are an integral part of this Nation's overall economy.

Mr. President, I hope that my colleagues will step back and look at this bill from a global perspective. The ability to efficiently move commerce in this country over the next 5 years will greatly affect our ability to compete in the global marketplace.

With the Canadian Free-Trade Agreement behind us and the Mexico Free-Trade Agreement ahead of us, transportation will play a key role in insuring that rural America can participate in these new opportunities.

And last, Mr. President, I would like to point out that Montana and other donee States have not received more than our fair share of Federal highway dollars over the past 40 years as some have claimed.

In this Nation's effort to complete the Interstate System, 52 percent of all highway user fees were spent on the 44,489-mile Interstate System—of which only 1,191 miles are in Montana; 805,225 miles, or nearly 95 percent of all eligible roadways, were left to compete for the remaining 48 percent of the highway user fees.

Federal records show that 376,471 miles of road received no Federal funds. And I can tell you which roads they are—they are the primary and secondary roads important to intra- and inter-state commerce.

They are the roads that connect rural areas to the interstate to facilitate the movement of the goods I talked about earlier.

Only 31 percent of rural counties currently have access to the Interstate System while 77 percent of urban areas are served by an interstate highway.

Clearly, rural America has not made out as well as some would like to believe.

I hope that my colleagues will take a broader look at this bill.

I urge my colleagues to reject any amendments to slant the Federal Highway Program toward more urban States and to maintain a balance that is fair to rural America—and to America as a whole.

I urge my colleagues to support S. 1204.

Mr. President, generally, regarding the bill that we are talking about today, S. 1204, some would say that probably we, as representatives of our different constituencies, are talking about our piece of the pie. Different formulas have been talked about, and some folks would stand around here and say that they would be losers and there would be winners.

Basically, what we are talking about in this bill—and I will address this particular amendment in just a minute—is so important to this Nation that it is basic to our very commercial existence.

We in Montana represent large spaces. We did not ask to be as big as we are, but we are that big. As a result, we are a State that probably receives, of the Federal dollars, more back than what we contribute.

But the figures have also been shown that as to U.S. citizens, our per capita expenditures are higher than some of the rest of the country, because we just have a higher gas tax in Montana, and of course there are less of us. We did not ask to be 148,000 miles big. We did not ask to be living on the Canadian border, where we have maybe some problems of maintaining our roads and highways that other parts of the country do not have, like the thaws and freezes and the depth of cold.

So as this goes on, and the debate goes on about what is fair and what is not fair, we say that we are all part of a national transportation plan. When we start looking at a national plan, let us be reminded that probably the biggest downfall to our competitor, and yes, at times, our adversary—but it becomes less everyday—the U.S.S.R.; look at their overall plan.

Last year, they harvested the biggest crop they have ever harvested to feed their people. The biggest crop. But they lose one-third of that crop by the time it is harvested, until it gets to their people to feed them. One-third of it. Then they have to go outside of their own nation and ask for credit and ask for help to feed their people.

The second thing we do every morning when we get up every day is eat. We are no different than any other nation in the world. Neither are they.

I support this bill, S. 1204, wholeheartedly, because I think it is, in all fairness, fair. It gives the State some flexibility that we truly need.

Let us talk about the amendment that is on the floor. Last year, this amendment was introduced as a bill, wholeheartedly supported by a lot of folks. Wonder why? Because this is as basic to our Nation and our freedoms as personal property. It never ceases to amaze me how many people can make how many arguments using great big words to erode a basic right of every American. And they do it under the guise of excuses like the Government

has primacy over everything that we do.

People do not draw their power from the Government. It is the other way around.

I was an original cosponsor last year and an original cosponsor this year. I believe that we need to reaffirm our support for the individual, for his or her justly acquired property. After all, what is any worse in this Nation than a tyrant in the White House, an executive tyranny, or tyranny imposed by a bureaucracy? There is no difference. It is still the taking of and eroding of property rights, one of the cornerstones of our society and a principle that has made this country great.

Federal legislation such as wetlands designation is threatening to stifle the critical economic development and, yes, at times environmental development, utilization of natural resources, those facilities nationwide. We had wetlands legislation as well as other Federal laws, such as the Endangered Species Act, which, while well-intentioned and would be supported by a number of us, go far beyond what we believed at the time of passage was their original intent. I do not think anyone would want to prevent the repair of a leaking irrigation system—we have them in Montana—or keep a wetlands that was created only as a result of the leak. But we are seeing those instances continually surface around our own neighborhoods, just as I am not sure that the Endangered Species Act envisioned virtual shutdown of tremendous areas in the Pacific Northwest as a result of the Spotted Owl. People's jobs and livelihoods are at stake. The economic impact on that area will be tremendous, tens of thousands of jobs and a State's inability to collect revenue, supply the services that are demanded by her people. They will not even be able to support their schools on a local level.

People are going to jail over the issue of private property running into Federal law. And is it not too bad that bureaucracies have to go to the Attorney General to find out if they are in bounds before they can take private property? Is not that terrible? It is going to be decided either by the Government or those people who we represent or is it going to be decided by the courts? Do you want to leave your fate to the courts?

A poor little man up in Pennsylvania—and everybody heard the story—cleaned up a useless lot and filled it in in order to expand his business. It was just an old wet pond, never had anything in it, just old junk, worn out tires and mosquitoes. He did not like the mosquitoes, filled it in, and made it a place where it is livable, habitable, a healthy place to live. He ended up going to jail for it. He is serving 3 years in jail. Would it not be too bad if that bureaucracy had to come to somebody and say, "Are we in bounds or out of bounds?" It does not make a lot of sense.

So those who would view this as an encroachment on Government, so be it. From my point of view, Government does not have all the answers, and sometimes, if they think they have the answers, they do not have the right ones. Usually the decision is made by someone who does not even live in the neighborhood.

So this is a good amendment, and I think it reaffirms this body's dedication to the basics of our Constitution, that is, private property and the rights that go with it.

So I thank the Chair for this time, and I thank the managers of this bill for their very careful consideration. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I will just respond. I am sorry I was at another meeting temporarily so I was off the floor, but I can summarize my views of this in very few words. The way this amendment was written, which was originally S. 50, it said basically that—let me go back, let me preface that remark with a different remark.

I listened to Senator BURNS very carefully because what he is talking about is property rights, and I do not quarrel with property rights. I am as much protective of property rights as anybody else. But the way this is written, as I understand it, if you had a regulation, it would have to go to the Justice Department even to be analyzed to see whether it had property rights involved, even though it was a health matter, whatever other matter that it was, that might really be directed to anything with what we normally think of as being property, as being property under eminent domain or whatever, being taken for highways or for watever governmental purpose, but it would not maybe have that in it.

But in order to certify it did not have that in it, it would still have to go to the Justice Department to be approved or disapproved and let someone decide, as I read into the RECORD a little while ago the write-up of what might have happened under a Justice Department that was under the control of Ed Meese, and that gave some of the people who watched that very carefully some real problems.

So this, in effect, sets up another potential bottleneck that could be used to thwart the congressionally approved, mandated, and signed by the President, laws and requirements that different agencies of Government never intended. So that is the reason I say let us look at this thing. In our haste to get this thing through here, let us not approve something like this that we should be taking a very balanced look at to make sure what the long-term implications of it are going to be.

That is the summary of it. I am opposed to the legislation. I am sorry it was turned down for a hearing to begin with. That is the way it goes. We can remedy that all right and have a hearing on it and develop the pros and cons and potentials of this thing. I hope people will oppose this amendment. I hope we can convince the floor manager to withdraw it and send it to the committee and have a hearing on it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I do not want to delay the issue, and I commend the senior Senator from New York and the senior Senator from Idaho for the splendid work they presented to us in committee with regard to the highway bill, and, after all, that is the essence of what we are about today. But I do have a statement. I see the majority leader has arrived here, and when he is ready to take the floor I will yield.

But, principally, back to this amendment: I do favor the amendment. I know you have had a rather contentious debate, but we in the public lands States understand this better than most and we try to bring it to the attention of our colleagues continually about things that happen to us in that part of the country with regard to various Federal laws. These laws are passed to control various land uses, and we get the National Environmental Policy Act business, the Wilderness Act, the Surface Management Control and Reclamation Act, the National Forest Management Act, Federal Lands Policy Management Act, the Endangered Species Act, Clean Water and Clean Air Act, to name but a few, and now we have wetlands regulations. None of them are bad. I voted for many of them. They were never bad when they first passed.

But take wetlands, for instance, given birth by the Corps of Engineers and the Environmental Protection Agency. They are the dual mothers of that legislation, the father being unknown. And presumably, under the authority of these various acts, it is a far cry from what we originally intended as a national priority.

So I do not want to delay the proceedings. I think it is a very serious and important amendment and we will cast a vote for property rights. I agree with the Senator from Ohio that we can have hearings, but it will impel us along our course more vigorously if we are able to send this on to hearing status.

I thank the Chair.

The continuing and contentious debate over use of our public lands, be they forest lands or range lands, has been ranging now in Congress and all across America for years. Numerous

laws have been passed to restrict and control certain uses: The National Environmental Policy Act, the Wilderness Act, Surface Management Control and Reclamation Act, the National Forest Management Act, the Federal Land Policy Management Act, the Endangered Species Act, the Clean Water and Clean Air Act, to name but a few. The Nation's demands and priorities change—and hopefully, Congress and our laws eventually reflect these changes in society.

Twenty-five years ago, when the public land management policies began to be more cognizant about, aware of, and responsive to environmental protection, it was a bit more understandable since, after all, these lands were owned by the public and some changes may well have been necessary. Some environmental abuses were occurring and that cannot be denied. But today, particularly in the West because we are such close neighbors to public lands, we are seeing this mentality of conservation or environmental protection at any cost sweep across the Federal boundaries of public lands and out onto our private lands.

Some folks, in and out of Congress and the Federal Government, feel it is their right, indeed, their duty and civic responsibility, to mandate just what actions will and won't occur on private lands in order to protect environmental qualities. This is right were we find ourselves today with wetlands policies and with the Endangered Species Act, and we in Congress and the Federal Government must act with more care and attention than ever before.

This country has made remarkable progress in protecting many important features of our environment on public and private lands. The Endangered Species Act may not have been bad in its inception, but it surely is getting out of hand in its application on private property because of the way it is being interpreted and the scope with which some people want to see it applied to actions on private lands.

The Clean Water Act may not have been bad when it was first passed in 1972, but the wetlands regulations that have been given birth by the Corps of Engineers and the Environmental Protection Agency, they are the dual mothers of all that—the father being unknown—presumably under the authority of the Clean Water Act, are a far cry from what Congress ever intended as a national priority. Especially now in the way it has been applied to restrict one's right on private property.

The very essence of America—a strong and vital economy—is what allows us all to enjoy the standard of living which gives Americans the opportunity and ability to enjoy a clean and refreshing environment. Yet today, with some of the environmental initiatives we're facing that restrict commodity use and development on private and public lands, we're threatening and injuring the very economic base that allows our country to even think about and work toward a clean environment.

When many of these environmental laws were first passed by the Congress, conservation was the national goal. But today, in many cases, certain regulations and proposed laws not only now cross the boundaries of lands, but also cross the line from conservation to preservation, a land management theory which seems to connote no action at all—zip—nothing. Preserving lands as they are today or even trying to recreate the circumstances of yesteryear brings businesses and growth and activity to a dead standstill. And for what—environmental protection? We already have that. Some conservation ideologies have become preservation ideologies, and in those circumstances, especially in the rugged West, we end up fighting continually for the very basics of what we all believe in.

Congress and the administration will face some very interesting battles in this session which deal with the constitutional rights of private property owners. We will have to approach each problem and circumstance issue by issue, vote by vote. And every vote is one surely worth fighting for. If you ask any of us straight out if we believe in private property rights, we would all answer yes. But private property rights get cloaked in very creative and complex arguments and other issues and agendas. Many special interest groups lobby so hard and extensively on Capitol Hill that some folks need to be reminded that each spoke is very much as important as the whole wheel, and any final legislation or initiative, no matter its environmental significance, is not acceptable if it treads on your rights as a private property owner.

No one action for property rights protection will make the difference. It is a mindset in Congress and the entire Government that requires a continual effort that you must work for, and that I work for daily. This amendment before us now requires that Federal agencies adopt administrative procedures to assess the potential for taking private property in the course of regulatory activity, with the goal of minimizing such where possible. It codifies what we already have by an Executive Order 12630. It is straightforward and it reflects a very basic value on which this country was established.

Today, we are not caught in the fray of a difficult environmental issue. We are not enmeshed in a judicial debate. Instead, we are asked to cast a vote which either protects our private property rights or not. I urge my colleagues to vote with Senator SYMMS and myself in favor of this basic constitutional right.

The PRESIDING OFFICER (Mr. GRAHAM). Who seeks recognition?

Mr. MOYNIHAN. Mr. President, I do not believe any Senator is seeking recognition at this point. Two Senators that I am aware of would like to speak on this matter. Accordingly, I suggest the absence of a quorum until they have reached the floor.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. Mr. President, are we on a time limitation of any sort?

The PRESIDING OFFICER. There is no time limitation.

Mr. DIXON. Mr. President, in that event, I rise in support of the amendment offered by my friend, the senior Senator from Idaho.

Mr. President, the great confusion and frustration that current wetlands' regulations pose is well documented. Conflicting regulations and inconsistent enforcement have resulted in a bureaucratic nightmare for many of our Nations businesses—from our rural farmers and ranchers, to our urban realtors and developers. The amendment now before us, which I rise in support of, will provide property owners with reasonable protections and safeguards from reckless Federal actions.

This bill does not limit Federal agencies' authority to regulate or fulfill any legislative mandate. Rather, the bill requires Federal discisionmakers to assess the potential impact of their regulatory action on private property rights, and minimize the transgression of private rights whenever possible.

The importance of wetlands cannot—and should not—be questioned. Wetlands support wildlife and fisheries, protect against floods and droughts, and help clean up pollutants before they can filter into ground water, lakes, and streams.

The preservation and restoration of wetlands have created certain problems, however, because the policy, definition, and regulatory authority on wetlands is extremely vague. At least four Federal agencies have jurisdiction over our Nation's wetlands: the Environmental Protection Agency, the Corps of Engineers, the Fish and Wildlife Service, and the Soil Conservation Service. Additionally, these agencies approach the classification of wetlands based on differing priorities, goals, and objectives. Today, wetlands run the gambit from coastal marshes to arctic tundra to seasonal prairie potholes.

In my State of Illinois, 40 percent of all crop land—crop land currently in production—is hydric soil. Under the Corp of Engineers' expanded criterion, hydric soils are now classified as wetlands. Should these farmers who farm

the land, repair tiles or levees, or apply chemicals and pesticides too close to designated areas be penalized? Unfortunately, nobody knows for sure, not even the Federal agencies who regulate wetlands. These farmers must proceed at their own risk. Something must be done to establish rationality and fairness to this process. We must approach the preservation of our Nation's wetlands in a reasonable and balanced way.

Mr. President, this amendment is an important first step in restoring a rational approach to the wetlands' problem. I urge my colleagues to support this amendment.

I yield the floor.

Mr. WALLOP. Mr. President, I rise to speak for the Symms amendment reaffirming the Constitution's protection of private property rights. Last week I addressed the Wyoming Stockgrowers Association's annual meeting held in Sheridan, WY. And, so often as it is the case in my State, the concerns focus on the Federal Government and it's encroachments on private property rights.

Ambitious Government policies intended to protect the environment increasingly, and often ridiculously, interfere with the constitutional rights of private landowners.

The U.S. Government is a bureaucratic monster when it comes to takings. It has spent $3.7 billion to acquire 4 million acres of recreation lands since 1965, yet has a backlog of land condemned but still unpaid for which exceeds $6 billion. That's 6 billion dollars' worth of private property rights?

And there's more—$58 million of the taxpayers money was awarded by the Federal courts over a 2-year period to satisfy just compensation claims under the fifth amendment. Pending court cases currently total upwards of $1 billion.

Private property owners can be injured by more than just legislative takings. California water users experienced the frustrations and expense of governmental restrictions when they attempted to repair their leaky canals. It seems the wetlands created by their inefficient water system has become habitat for wildlife. When the Government learned about the proposed repairs, it forced the private water users to mitigate the impact on the accidental habitat by retaining the artificially created wetlands. All of this, using their own money and their own scarce water.

Perhaps the most classic example of a taking is found in the case of rancher and conservationist, Dayton Hyde. Hyde took a poor piece of land and turned it into a lake and the area around it into a wetland.

But, Hyde's environmental improvements made him a victim of eager regulators who considered it their duty to protect the environment. His lands were zoned for wetlands and his operation was choked by the resulting regulations.

As Robert Frost said, "Good fences makes good neighbors." In Wyoming, the Federal Government is a large neighbor with almost 50 percent ownership of the State. S. 50 will help our neighbor stay inside its fifth amendment's fence. This amendment forces them to identify the boundaries, and more importantly, to recognize when it crosses those boundaries. With its fence clearly charted, the Federal Government can become a good neighbor.

PRIVATE PROPERTY RIGHTS ACT

Mr. DURENBERGER. Mr. President, I am pleased that the Senate has the opportunity to vote on the Private Property Rights Act. I commend and thank the senior Senator from Idaho for his leadership on this important issue. I strongly support him in this effort.

It is, in my judgment, fitting that the Senate reaffirm its support for the rights of private property owners during consideration of the Surface Transportation Act. The seemingly ceaseless stream of Federal regulation in a multiplicity of important areas are not without consequences affecting the citizens of this Nation. All too often, regulations are promulgated which restrict the use of private property to such a degree that the value of property is diminished and livelihoods are disrupted. This should not be the case.

While I support many of the regulations which have caused these unintended effects, I also recognize and support the obligation of the Federal Government to consider the implications of these regulations for all Americans. When regulation results in effectively taking property, our Government is obligated to offer recompense to its owners. Compensation is not only required by the fifth amendment to the Constitution, it is required by decency and fairness.

Regulations designed to benefit all Americans should never come at the expense of the individual property owners who, for no fault of their own, get caught in the crossfire. There also is no reason why aggrieved property owners, not to mention the Federal Government, must go through tortuous and costly court battle to address this issue. I am optimistic, Mr. President, that the Private Property Rights Act will greatly reduce the need for litigation and help to eliminate the disruption caused by Federal regulations.

I hope, Mr. President, that this amendment will signal a new sensitivity and commitment on the part of the Federal Government, not just on issues of taking, but in every respect, to the consequence of its regulations on the people of America.

Mr. MITCHELL. Mr. President, I rise to oppose the amendment and I urge my colleagues to vote no on this amendment.

I think it is important to put this in some perspective so we understand the background of the issue on which we are voting.

The Reagan administration issued Executive Order 12630 on March 15, 1988, titled "Government Actions and Interference With Constitutionally Protected Property Rights."

The amendment by the senior Senator from Idaho incorporates the Executive order in law by reference.

The alleged purpose of the Reagan Executive order is to assure that Federal actions do not run afoul of the fifth amendment provisions of the Constitution, which requires just compensation for takings.

But the effect of both the Executive order and the amendment is to undermine our health, environmental, safety, and civil rights laws.

Nothing currently allows Federal agencies to act in a manner that is inconsistent with the Constitution. No law is needed to guarantee that the Constitution is the supreme law of the land. That issue was settled two centuries ago in Marbury versus Madison.

But a law would need to be passed to provide the Department of Justice with oversight over all Federal regulatory actions.

This amendment is such a law. It could hamstring Federal implementation of our laws.

The irritant that draws the Senator from Idaho to the floor is reportedly the fact that the Environmental Protection Agency has failed to finalize its guidelines for implementing the Reagan Executive order.

Why should Congress pass a law to assure that the Federal agencies act consistently with an Executive order? Surely the power of the President extends to assuring Federal agency compliance with a Presidential order. If the problem is the absence of EPA guidelines, then the administration can remedy the problem.

We should not hold up Federal regulations, pending approval of guidelines and certification by the Attorney General, over a problem of internal administration implementation of an Executive order.

There are problems, however, with the Executive order itself. The Executive order describes its two purposes as: First, ensuring that Federal agencies act "with due regard for the constitutional protections provided by the fifth amendment," and second, reducing "the risk of undue or inadvertent burdens on the public fisc resulting" from agency action.

The Executive order fails its first purpose because it does not accurately describe current takings laws as articulated by the Supreme Court.

The Executive order is intended to respond to three takings cases decided by the Supreme Court in 1987:

Keystone Bituminous Coal Association versus DeBenedictis;

First English Evangelical Lutheran Church versus City of Los Angeles; and

Nollan versus California Coastal Commission.

The general thrust of the Executive order reflects an interpretation of these cases as new takings law.

However, to the extent these cases simply reiterate current law, there is no need for the Executive order.

But the Executive order does not accurately reflect the holdings in these cases.

In fact, the Executive order articulates a view of takings law that is well beyond the point reached by the Supreme Court on inverse condemnation.

Therefore, the Executive order cannot assure consistency with the just compensation clause because the order is itself inconsistent with decisions of the Supreme Court.

The Executive order also implies that the fifth amendment creates a constitutional protection of private property against inverse condemnation. In contrast, the Supreme Court has held that the just compensation clause merely ensures compensation for such takings and does not bar inverse condemnation.

As for the second purpose, the Executive order never describes "undue or inadvertent burdens on the public fisc" resulting from agency actions that may result in takings.

However, according to information obtained from the Federal agencies by the House Merchant Marine and Fisheries Committee, the United States paid on average less than $2 million annually for takings that might have been avoided by implementation of the Executive order. So there have been no "undue or inadvertent burdens on the public fisc" that need to be reduced.

In addition, unless a Federal statute provides otherwise, Federal agencies are limited to the factors prescribed in their authorizing statute and regulations when making decisions on the application of Federal regulatory authority to private property.

For example, whether a permit denial may be construed by a court to effect a taking is not a relevant factor in an agency's decision to grant or deny a permit, absent express legislative authority making it a factor.

As a result, it is logical to conclude that agency actions that may be construed as takings are not "undue or inadvertent" so long as they are not arbitrary, capricious, unlawful, or outside of the authority granted by the enabling legislation.

Of course, if agency regulatory actions fail to meet the test of the Administrative Procedure Act, if applicable, or they are beyond the scope of the agency's authority, then they are subject to invalidation by a Federal court, which would obviate any claim of a taking.

Therefore, regulatory actions that may result in takings are either authorized and valid, in which case they are neither "undue nor inadvertent," or they are not, in which case they are not takings.

Since neither stated purpose is valid or logical, one can conclude that the Executive order's true purposes are unstated.

I maintain that the order's true purpose is to expand the circumstances in which a taking will be considered to have occurred and to chill the agencies from making regulatory decisions that may be construed as takings under existing inverse condemnation law as well as the expanded view of this law reflected in the Executive order.

This chilling effect appears to be the purpose of the pending amendment. During last year's debate on a similar amendment offered by the Senator from Idaho on the farm bill, he stated that Congress faced two options:

> First, roll back the aggressiveness of our national environment, health, public safety, civil rights and other laws* * *.

The second option was the amendment proffered by the senior Senator from Idaho, which is substantially similar to the amendment.

The clear intent of this amendment is to undermine the effectiveness of our environmental, health, safety, and civil rights laws.

The document appears to be a parting gift or legacy from the administration that introduced the Nation to deregulation.

For example, the Executive order states that "[a]ctions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property."

The reference to physical invasion presents nothing new.

Physical invasion was first recognized by the Supreme Court as a type of inverse condemnation over 100 years ago and was the only kind of implied taking so recognized for 50 years.

The assertion that "regulations imposed on private property that substantially affect its value or use * * * may constitute a taking of property" is an example of the subtle way in which this Executive order seeks to undermine regulatory protection by chilling agency action.

This statement is of no value to agencies in determining whether a permit denial or regulation will effect a taking.

Instead, it creates a new, vague factor for finding a taking, and one that the Supreme Court has never articulated.

Thus, the Executive order gratuitously raises doubts about agency actions as takings without providing any guidance for assessing whether takings actually have occurred and without being based on established takings law.

The Executive order also incorrectly states that "Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature."

The Supreme Court has expressly "reject[ed] the proposition that diminution in property value, standing alone, can establish a 'taking' * * *"

Even complete elimination of "a beneficial use to which individual parcels had previously been devoted" does not constitute a taking, according to the Supreme Court.

In fact, the Court has rejected a takings determination in cases where the remaining value was only 13 to 25 percent of the unregulated value.

These Supreme Court cases strongly imply that a taking is precluded if any economically viable use remains.

With respect to the protection of public health and safety the order states that actions which "are asserted to be for the protection of public health and safety * * * should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose."

There is no basis in the 1987 Supreme Court takings cases for limiting actions for the protection of health and safety to "real and substantial" threats and to those that are designed to "advance significantly" such protection.

Instead, the Court in Keystone restated well-established law that a taking occurs if the regulation "does not substantially advance a legitimate state interest."

The Executive order erects a higher barrier for health and safety regulatory actions than for other types of regulatory actions.

The order's requirement that a regulatory action must "be no greater than is necessary to achieve the health and safety purposes" encourages agencies to err in favor of underregulating a health threat rather than overregulating it.

The Supreme Court said in Keystone: "That a land use regulation may be somewhat overinclusive or underinclusive is, of course, no means for rejecting it."

The Supreme Court's approach appropriately leaves the decision to Congress.

In addressing the problem of stratospheric ozone depletion, Congress may elect to overregulate for a period of time before regulation can be tailored precisely to contribution because it may be too late to take effective measures once the level of contribution is precisely determined.

The Executive order attempts to use the Constitution's just compensation clause as an excuse to impose a regulatory philosophy on Federal agency efforts to implement the law without regard to the determinations that were made by Congress in enacting that law.

Mr. President, I now move to table the amendment, if that is acceptable and if debate has been concluded. I move to table the Symms amendment, amendment No. 305.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. There being no further debate, the question is on agreeing to the motion of the Senator from Maine. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 44, nays 55, as follows:

[Rollcall Vote No. 91 Leg.]

YEAS—44

Adams	Graham	Moynihan
Akaka	Harkin	Pell
Baucus	Inouye	Reid
Biden	Kasten	Riegle
Bingaman	Kennedy	Robb
Bradley	Kerrey	Rockefeller
Bryan	Kerry	Rudman
Byrd	Kohl	Sanford
Chafee	Lautenberg	Sarbanes
Cohen	Leahy	Sasser
Cranston	Levin	Simon
Danforth	Lieberman	Wellstone
Dodd	Metzenbaum	Wirth
Glenn	Mikulski	Wofford
Gore	Mitchell	

NAYS—55

Bentsen	Exon	McConnell
Bond	Ford	Murkowski
Boren	Fowler	Nickles
Breaux	Garn	Nunn
Brown	Gorton	Packwood
Bumpers	Gramm	Pressler
Burdick	Grassley	Roth
Burns	Hatch	Seymour
Coats	Hatfield	Shelby
Cochran	Heflin	Simpson
Conrad	Helms	Smith
Craig	Hollings	Specter
D'Amato	Jeffords	Stevens
Daschle	Johnston	Symms
DeConcini	Kassebaum	Thurmond
Dixon	Lott	Wallop
Dole	Lugar	Warner
Domenici	Mack	
Durenberger	McCain	

NOT VOTING—1

Pryor

So the motion to lay on the table the amendment (No. 305) was rejected.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further debate?

Mr. SYMMS. Mr. President, if there is no further debate, I yield to the floor manager. But we have a recorded vote ordered on the text of the amendment. I ask unanimous consent that we vitiate the vote and move to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Is there objection to the final vote on the amendment? There are two amendments. The vote is on the second-degree amendment.

Without objection, the second-degree amendment (No. 306) is agreed to.

The amendment (No. 306) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further debate on the underlying Symms amendment, No. 305, as amended? If not, the question is on agreeing to the amendment, as amended.

The amendment (No. 305), as amended, was agreed to.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. If the Senator from New York will suspend, the Senate is not in order.

The Senator from New York is recognized.

The pending business is the Byrd amendment.

Mr. MOYNIHAN. Mr. President, once again I ask unanimous consent that the pending Byrd amendments be temporarily laid aside for the consideration of an amendment—I believe there are a number of parts, or sequence of amendments, as the case might be—by the distinguished junior Senator from Montana, who I see is on the floor.

The PRESIDING OFFICER. Is there objection? Without objection, the Byrd amendments are laid aside for the response of an amendment by the Senator from Montana, who is recognized.

Mr. BURNS. Mr. President, I thank the managers of this bill. I have five amendments I would like to offer to this bill. They are noncontroversial and I believe are acceptable to the floor managers.

I first call up amendments 297, 298, and 299. I believe there are some technical corrections on 299 at this time.

The PRESIDING OFFICER. Is there objection to the consideration of these amendments en bloc? If not, without objection, it is so ordered. The Clerk will report.

AMENDMENTS NOS. 297, 298, AND 299

Mr. BURNS. Mr. President, I send amendments to the desk, en bloc, and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BURNS], for himself, Mr. CONRAD, Mr. DANFORTH, Mr. GARN, Mr. GORTON, Mr. JEFFORDS, Mr. KASTEN, Mr. LOTT, Mr. MCCAIN, Mr. PRYOR, Mr. WALLOP, Mr. SIMPSON, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HOLLINGS, and Mr. MCCONNELL, proposes amendment numbered 297.

The Senator from Montana [Mr. BURNS], for himself and Mr. SYMMS, proposes an amendment numbered 298.

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 299.

Mr. BURNS. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 297

At the appropriate place, insert the following new section:

SEC. . RURAL TOURISM DEVELOPMENT.

(a) SHORT TITLE.—This section may be cited as the "Rural Tourism Development Act of 1991".

(b) RURAL TOURISM DEVELOPMENT FOUNDATION.—

(1) FINDINGS.—The Congress finds that increased efforts directed at the promotion of rural tourism will contribute to the economic development of rural America and further the conservation and promotion of natural, scenic, historic, scientific, educational, inspirational, or recreational resources for future generations of Americans and foreign visitors.

(2) ESTABLISHMENT OF FOUNDATION.—In order to assist the United States Travel and Tourism Administration in the development and promotion of rural tourism, there is established a charitable and nonprofit corporation to be known as the Rural Tourism Development Foundation (hereafter in this section referred to as the "Foundation").

(3) FUNCTIONS.—The functions of the Foundation shall be the planning, development, and implementation of projects and programs which have the potential to increase travel and tourism export revenues by attracting foreign visitors to rural America. Initially, such projects and programs shall include but not be limited to—

(A) participation in the development and distribution of educational and promotional materials pertaining to both private and public attractions located in rural areas of the United States, including Federal parks and recreational lands, which can be used by foreign visitors;

(B) development of educational resources to assist in private and public rural tourism development; and

(C) participation in Federal agency outreach efforts to make such resources available to private enterprises, State and local governments, and other persons and entities interested in rural tourism development.

(4) BOARD OF DIRECTORS.—

(A) ESTABLISHMENT.—

(i) COMPOSITION.—The Foundation shall have a Board of Directors (hereafter in this section referred to as the "Board") that—

(I) during its first two years shall consist of nine voting members; and

(II) thereafter shall consist of those nine members plus up to six additional voting members as determined in accordance with the bylaws of the Foundation.

(ii) APPOINTMENT.—

(I) The Under Secretary of Commerce for Travel and Tourism shall, within six months after the date of enactment of this Act, appoint the initial nine voting members of the Board and thereafter shall appoint the successors of each of three such members, as provided by such bylaws.

(II) The voting members of the Board, other than those referred to in subclause (I), shall be appointed in accordance with procedures established by such bylaws.

(iii) QUALIFICATIONS.—The voting members of the Board shall be individuals who are not Federal officers or employees and who have demonstrated an interest in rural tourism development. Of such voting members, at least a majority shall have experience and expertise in tourism trade promotion, at least one shall have experience and expertise in resource conservation, at least one shall have experience and expertise in financial administration in a fiduciary capacity, at least one shall be a representative of an Indian tribe who has experience and expertise in rural tourism on an Indian reservation, at least one shall represent a regional or national organization or association with a major interest in rural tourism development or promotion, and at least one shall be a representative of a State who is responsible for tourism promotion.

(iv) TERMS OF OFFICE.—Voting members of the Board shall each serve a term of six years, except that—

(I) initial terms shall be staggered to assure continuity of adminsitration;

(II) if a person is appointed to fill a vacancy occurring prior to the expiration of the term of his or her precedecessor, that person shall serve only for the remainder of the pedecessor's term; and

(III) any such appointment to fill a vacancy shall be made within 60 days after the vacancy occurs.

(B) EX-OFFICIO MEMBERS.—The Under Secretary of Commerce for Travel and Tourism and representatives of Federal agencies with responsibility for Federal recreational sites in rural areas (including the Naitonal Park Service, Bureau of Land Management, Forest Service, Corps of Engineers, Bureau of Indian Affairs, Tennessee Valley Authority, and such other Federal agencies as the Board determines appropriate) shall be nonvoting ex-officio members of the Board.

(C) CHAIRMAN; VICE CHAIRMAN.—The Chairman and Vice Chairman of the Board shall be elected by the voting members of the Board for terms of two years.

(D) MEETINGS; QUORUM; OFFICAL SEAL.—The Board shall meet at the call of the Chairman and there shall be at least two meetings each year. A majority of the voting members of the Board serving at anyone time shall constitute a quorum for the transaction of business, and the Foundation shall have an official seal, which shall be judicially noticed. Voting membership on the Board shall not be deemed to be an office within the meaning of the laws of the United States.

(5) COMPENSATION AND EXPENSES.—No compensation shall be paid to the members of the Board for their services as members, but they may be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members out of Foundation funds available to the Board for such purposes.

(6) ACCEPTANCE OF GIFTS, DEVISES, AND BEQUESTS.—

(A) IN GENERAL.—The Foundation is authorized to accept, receive, solicit, hold, administer, and use any gifts, devises, or bequests, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein for the benefit of or in connection with rural tourism, except that the Foundation may not accept any such gift, devise, or bequest which entails any expenditure other than from the resources of the Foundation. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of rural tourism.

(B) GIFTS, DEVISES, AND BEQUESTS FOR BENEFIT OF INDIAN TRIBES.—A gift, devise, or bequest accepted by the Foundation for the benefit of or in connection with rural tourism on Indian reservations, pursuant to the Act of February 14, 1931 (25 U.S.C. 451), shall be maintained in a separate accounting for the benefit of Indian tribes in the development of tourism on Indian reservations.

(7) INVESTMENTS.—Except as otherwise required by the instrument of transfer, the Foundation may sell, lease, invest, reinvest, retain, or otherwise dispose of or deal with any property or income thereof as the Board may from time to time determine. The Foundation shall not engage in any business, nor shall the Foundation make any investment that may not lawfully be made by a trust company in the District of Columbia, except that the Foundation may make any investment authorized by the instrument of transfer and may retain any property accepted by the Foundation.

(8) USE OF FEDERAL SERVICES AND FACILITIES.—The Foundation may use the services and facilities of the Federal Government and such services and facilities may be made available on request to the extent practicable without reimbursement therefor.

(9) PERPETUAL SUCCESSION; LIABILITY OF BOARD MEMBERS.—The Foundation shall have perpetual succession, with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and to be sued in its own name, but the members of the Board shall not be personally liable, except for malfeasance.

(10) CONTRACTUAL POWER.—The Foundation shall have the power to enter into contracts, to execute instruments, and generally to do any and all lawful acts necessary or appropriate to its purposes.

(11) ADMINISTRATION.—

(A) IN GENERAL.—In carrying out the provisions of this section, the Board may adopt bylaws, rules, and regulations necessary for the administration of its functions and may hire officers and employees and contract for any other necessary services. Such officers and employees shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and may be paid without regard to the provisions of chapters 51 and 53 of such title relating to classification and General Schedule pay rates.

(B) VOLUNTARY AND UNCOMPENSATED SERVICES.—The Secretary of Commerce may accept the voluntary and uncompensated services of the Foundation, the Board, and the officers and employees of the Foundation in the performance of the functions authorized under this section, without regard to section 1342 of title 31, United States Code, or the civil service classification laws, rules, or regulations.

(C) TREATMENT AS FEDERAL EMPLOYEE.—Neither an officer or employee hired under subparagraph (A) nor an individual who provides services under subparagraph (B) shall be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(12) EXEMPTION FROM TAXES; CONTRIBUTIONS.—The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of the Board, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of this subsection or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

(13) LIABILITY OF UNITED STATES.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

(14) ANNUAL REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

(15) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for each of fiscal years 1991, 1992, and 1993 not to exceed $50,000 to—

(A) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Rural Tourism Development Foundation by private persons and Federal, State, and local government agencies; and

(B) provide administrative services for the Rural Tourism Development Foundation.

(16) DEFINITIONS.—As used in this section, the term—

(A) "Indian reservation" has the meaning given the term "reservation" in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d));

(B) "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(C) "local government" has the meaning given that term in section 3371(2) of title 5, United States Code; and

(D) "rural tourism" means travel and tourism activities occurring outside of United States Standard Metropolitan Statistical Areas, including activities on Federal recreational sites, on Indian reservations, and in the territories, possessions, and commonwealths of the United States.

(17) ASSISTANCE BY SECRETARY OF COMMERCE.—Section 202(a) of the International Travel Act of 1961 (22 U.S.C. 2123(a)) is amended—

(A) by striking "and" at the end of paragraph (14);

(B) by striking the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new paragraph:

"(16) may assist the Rural Tourism Development Foundation, established under the Rural Tourism Development Act of 1991, in the development and promotion of rural tourism."

Mr. BURNS. Mr. President, last year, the Senate passed the Rural Tourism Development Foundation as part of S. 1791, the Tourism Policy and Export Promotion Act of 1991. The Senate Commerce, Banking, and Surface Transportation Committee leadership supports this amendment.

The Foundation is a nonprofit, nongovernment-managed, privately funded entity that would finance planning, development, and implementation of programs which have the potential to increase travel and tourism export revenues by attracting foreign visitors to rural America.

Financing would be available for Federal land management agencies, private enterprises, State, local and tribal governments, and other entities that promote rural tourism destinations abroad.

The Foundation supports S. 1204's efforts to use transportation spending for rural tourism development. S. 1204 creates a FHWA new Scenic and Historic Byways office and an all American roads program. Outstanding roads would be promoted to enhance rural tourism, economic development, and world-class tourism destinations.

Federal law prohibits Federal agencies from printing or distributing materials or marketing public lands abroad. The Foundation would be able to support international marketing efforts, as well as, public-private partnerships to supply road users information.

In addition, S. 1204 authorizes a $2.3 billion Federal Lands Category Program that supports public lands highways, including forest roads, U.S. Parks and parkways, and Indian reservation roads.

Though a substantial funding increase over 1987 program levels is provided, the amounts are insufficient to meet actual needs. A major Foundation goal is to promote lesser-known tourism destinations and to divert domestic and international travelers away from overcrowded facilities.

This not only affords national protection to popular attractions such as Yosemite, but allows Federal land dependent communities an opportunity to expand their local economies.

AMENDMENT No. 298

On page 37, line 18, insert the following after 'title'.":

(4) Section 204 of title 23 United States Code, is amended by striking subsection (h) and inserting instead:

Subsection (h) funds available for each class of Federal Lands Highways may be available for the following:

"(1) transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development;

"(2) adjacent vehicular parking areas;

"(3) interpretive signage;

"(4) acquisition of necessary scenic easements and scenic or historic sites;

"(5) provision for pedestrians and bicycles;

"(6) construction and reconstruction of roadside rest areas including sanitary and water facilities; and

"(7) other appropriate public road facilities such as visitor centers as determined by the Secretary.

"(i) The Secretary shall transfer to the Secretary of Interior from the appropriation for public land highways amounts as may be needed to cover necessary administrative costs of the Bureau of Land Management in connection with public lands highways.".

Section 205(c) is amended by striking $15,000 in 4 places and inserting in lieu thereof $50,000.

FEDERAL LANDS AMENDMENT

Mr. BURNS. Mr. President, this amendment amends section 111 of S. 1204 with language from a bill I introduced earlier this year, S. 540. I am pleased to have Senator SYMMS as a cosponsor of this amendment.

This amendment encourages, but does not require, States to select Federal land projects that implement Federal tourism and recreational travel initiatives as part of an overall transportation investment strategy. Specific statutory reference is provided for the existing Forest Scenic Byways Program, BLM Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.

The amendment also lists specific project enhancement costs, such as interpretive signage, acquisition of necessary scenic easements and scenic or historic sites, and appropriate public road facilities as determined by the Secretary as eligible costs.

The amendment is compatible with other S. 1204 provisions that create a FHWA Scenic and Historic Byways Office and Program, and provide States more flexibility in spending road grants on transportation enhancements.

Under existing law, the Secretary of Agriculture is provided road administrative costs to defray expenses incurred under the Federal Land Forest Highways Program. That amount is approximately $500,000 per year. For equity, administrative costs are extended to the Secretary of the Interior to cover Bureau of Land Management costs.

Finally, the amendment will raise the dollar amount that the Federal Government could spend per mile for trail improvements. The amount is raised to $50,000 from $15,000 per mile to reflect higher prices. This will allow the Federal Government to participate in more public-private partnership arrangements.

The real purpose of this amendment is to provide a framework under which the public lands category can play a role in developing a transportation infrastructure to support a rural tourism economy.

Tourism generates jobs and tax revenues, and it is an industry in which America is globally competitive. Access to Federal tourist and recreational sites is particularly important in the west where an average of 50 percent of all land is federally owned.

I hope that my colleagues will support this important amendment.

Mr. President, section 111 substantially increases the Federal Lands funding levels. Though as indicated by S. 1204's report language, that level falls far short of actual need. Section 111 combines the forest roads and public land highways into one account, but appears to keep the existing project selection criteria for diverse road needs. How would this program operate under the modifications?

Mr. SYMMS. Sixty-six percent of the money would be allocated to Forest Service regional offices based on forest highway criteria. The remaining 34 percent would be available under national competition for forest or public roads. Currently, forest road grants are limited to a 25,000-mile State-local road network in 41 states. The new public land highways definition includes the existing forest road definition and accompanying regulations except that forest road projects are no longer restricted to the 25,000-mile network. Federal grants can be spent on any type of road as long as it is open to public travel. Under the public lands highway discretionary money, only projects which are bound on both sides by federal land ownership are eligible. This contrasts with forest road projects which are often bound by privately-held property or a mixture of road ownership patterns.

Existing rules governing project selection for forest road and public land highway are retained. For forest roads, the State, Forest Service and FHWA meet each year to discuss a 5-year project program. Forest road projects must meet six criteria: First, the development, utilization, protection, and administration of the National Forest System and its renewable resources; second, the enhancement of economic development at the local, regional, and national level; third, the continuity of the transportation network serving the National Forest System and its dependent communities; fourth, the mobility of the users of the transportation network and the goods and services provided; fifth, the improvement of the transportation network for economy of operation and maintenance and the safety of its users; and sixth, the protection and enhancement of the rural

environment associated with the National Forest System and its renewable resources.

For public lands highway, the guidelines are much broader. As with forest roads, the project must bear a relationship to Federal land and resource management plans. Other factors, such as traffic carrying capacity, adequacy of the State and Federal agency transportation plans with regard to route continuity, capacity, safety and the construction timetable are considered.

Mr. BURNS. It is my understanding that the Administration discontinued the public lands discretionary account because States were nominating forest road projects over other roads adjoining other Federal land agencies. That in part may reflect State interest in reducing the $4 billion in unmet forest road needs. The main reason, however, is that only the Forest Service participates formally in the Federal lands project nominating process. What can be done to provide BLM more representation without a major change in the regulations?

Mr. SYMMS. Section 111 modifications were patterned after Idaho's collaborative interagency approach in nominating projects. If the Senator's main concern is getting BLM community interests on the table when the State and Forest Service are discussing project priority. That could be easily accomplished. The Secretary could establish a procedure to notify all Federal land agencies that public lands highway discretionary funds are available. Each State and all Federal land agencies could then work toward a 5-year project list that would provide an appropriate state balance between forest roads and other public lands highways.

Mr. BURNS. Would that require statutory language?

Mr. SYMMS. No, the Secretary could establish that procedure based on legislative history. Does the Senator from New York agree the Secretary should notify all Federal land agencies when the public lands highway funds are available for national competition?

Mr. MOYNIHAN. Yes, I think that would be appropriate.

Mr. SYMMS. Section 111 report language encourages States to develop a public lands highway investment strategy to target limited dollars. That strategy may include continued use of the 25,000-mile forest road network and the creation of a BLM-State designated system that would include adjoining State and local roads that provide access to BLM property. States may wish to use the guidelines used to establish the forest road network and project selection criteria to define the scope of the BLM network.

Mr. BURNS. I agree that States should use an investment strategy to target Federal lands funds. Under my amendment, States would be encouraged, but required to select projects that implement Federal tourism and recreational travel strategies. Specific statutory reference is provided for the Forest Scenic Byways Program, BLM Back Country Byways Program, National Trail System Program and other similar Federal programs that benefit recreational development. The amendment also lists specific project enhancement costs, such as interpretive signage, acquisition of necessary scenic easements and scenic or historic sites, and appropriate public road facilities as determined by the Secretary as eligible costs.

Under existing law, the Secretary of Agriculture is allowed administrative road cost for forest roads, approximately $500,000 per year. Program costs would be extended to the Secretary of Interior for BLM roads. In addition, the amendment would raise the dollar amount that the Federal Government could spend per mile for trail improvements. The amount is raised to $50,000 from $15,000 per mile to reflect higher prices. This would allow the Federal Government to participate in more public-private partnerships.

Mr. MOYNIHAN. I have no objection to your amendment.

Mr. SYMMS. I accept the amendment and would be interested in being listed as a cosponsor.

AMENDMENT No. 299

At the appropriate place, insert the following new section:

SEC. . EDUCATION AND TRAINING PROGRAM.

Chapter 1 of title 23, United States Code is amended by adding in an appropriate place the following new section:

"Education and Training Program.

"(a) AUTHORITY.—The Secretary is authorized to carry out a transportation assistance program that will provide highway and transportation agencies, in (1) urbanized areas of 50,000 to 1,000,000 population and (2) rural areas, access to modern highway technology.

"(b) GRANTS AND CONTRACTS.—The Secretary may make grants and enter into direct contracts for education and training, technical assistance and related support service that will: (1) assist rural local transportation agencies to develop and expand their expertise in road and transportation areas, including pavement, bridge and safety management systems; improve roads and bridges; enhance programs for the movement of passengers and freight; and deal effectively with special road related problems by preparing and providing training packages, manuals, guidelines and technical resource materials; and a tourism and recreational travel technical assistance program; (2) identify, package and deliver usable highway technology to local jurisdiction to assist urban transportation agencies in developing and expanding their ability to deal effectively with road related problems; (3) establish, cooperation with State transportation or highway departments and universities (A) urban technical assistance program centers in States with two or more urbanized areas of 50,000 to 1,000,000 population and (B) rural technical assistance programs centers: *Provided*, That not less than four centers be designated to provide transportation assistance that may include, but not necessarily limited to, a "circuit-rider program, training on intergovernmental transportation planning and project selection, and a tourism recreational travel component to American Indian tribal governments.

"(2) FUNDS.—The funds required to carry out the provisions of this section shall be taken out of administrative funds authorized by section 104(a). The sum of $8 million per fiscal year for the fiscal years 1992, 1993, 1994, 1995, and 1996 is authorized to be appropriated from the highway account of the highway trust fund for the purpose of providing technical and financial support for these centers, including up to 100 per centum for services provided to American Indian tribal governments. An additional sum of $5 million is authorized to be appropriated from the highway account of the highway trust fund to establish and carry out a tourism and recreational travel technical assistance program in nonurbanized areas to remain available until expended.

Mr. BURNS. Mr. President, this amendment provides a statutory base for a Federal Highway Administration [FHWA] Technology Transfer Program, commonly known as the Rural Technical Assistance Program [RTAP].

RTAP packages and markets road technology for local officials through a national clearinghouse and 48 State centers.

FHWA and the American Association of State Highway and Transportation Officials would like to expand the Technology Transfer Program to urban areas up to 1,000,000 in population to provide urban engineers access to new design, engineering and construction technology. FHWA believes that existing centers could cover urban needs up to the 1,000,000 population cutoff without affecting the integrity of the Rural Program. This also will help those areas deal with certain MPO and congestion mitigation requirements included in S. 1204.

The amendment also adds a national tourism and recreational travel component to support S. 1204's National Scenic and Historic Byways Office and program initiative as well as other tourism and recreational enhancement language included by Senator SYMMS and hopefully some by myself. This language is also adapted from my bill, S. 540.

"Transportation issues relating to travel and tourism," according to the Center for the New West, a Denver-based research group, "often raise sensitive and significant community issues."

A scenic highway designation, for example, may require protection of natural landscapes and cultural characteristics of the area. That, in turn, may affect road maintenance and vegetation policy, require zoning pertaining to road-side development, and affect heavy commercial traffic.

Under this amendment, RTAP will provide small communities access to expertise and a framework in which to resolve these issues.

The amendment also directs FHWA to provide special services to native Americans through four RTAP centers.

Unfortunately, native American participation in the RTAP has not been extensive outside of the Bureau of Indian Affairs. To overcome this problem, the Secretary is instructed to designate four centers to provide Indian tribal governments special services. At a minimum, these services shall include a "circuit-rider" program, training on intergovernmental transportation planning and project selection, and a tourism recreational travel component.

Finally, the amendment recommends an $8 million per year authorization—double current level—from the highway trust fund for the rural and urban programs.

In the past, FHWA has supplemented each center's operation with its administrative funds. Their funding has diminished in recent years from $125,000 to $90,000 per center as more centers have come on-line. OMB has denied FHWA's budget request for a $6 million rural program and urban expansion due to lack of a congressional directive.

This amendment provides that directive along with an additional $2 million for updating training material and for the native American services. A one-time $5 million authorization is provided to develop training material for the tourism component.

I encourage my colleagues to support the amendment. Nearly 57 percent of the Nation's 3.9 million miles of road network is operated by counties, towns, and townships. Most of those roads are virtually ineligible for Federal aid.

The RTAP is a low-cost approach of extending local government buying power. In addition, with the increased emphasis on facility management, urban areas will benefit from FHWA's Technology Transfer Program. The administration's bill and S. 1121 include the basic technical assistance amendment, and I hope my colleagues will accept it as a part of S. 1204.

Mr. BURNS. Mr. President, I ask unanimous consent that amendment No. 299 be modified, and we will modify that before final adoption.

AMENDMENT NO. 299, AS MODIFIED

The PRESIDING OFFICER. Without objection, the Senator has submitted his modification to his amendment 299. That modification will be so incorporated.

The amendment No. 299, as modified, is as follows:

S. 1204 is amended by adding in an appropriate place the following new section.

SEC. . EDUCATION AND TRAINING PROGRAM.

Chapter 1 of title 23, United States Code, is amended by adding in an appropriate place the following new section:

"EDUCATION AND TRAINING PROGRAM.

"(a) AUTHORITY.—The Secretary is authorized to carry out a transportation assistance program that will provide highway and transportation agencies, in (1) urbanized areas of 50,000 to 1,000,000 population and (2) rural areas, access to modern highway technology.

"(b) GRANTS AND CONTRACTS.—The Secretary may make grants and enter into direct contracts for education and training, technical assistance and related support service that will: (1) assist rural local transportation agencies to develop and expand their expertise in road and transportation areas, including pavement, bridge and safety management systems; improve roads and bridges; enhance programs for the movement of passengers and freight; and deal effectively with special road related problems by preparing and providing training packages, manuals, guidelines and technical resource materials; and a tourism and recreational travel technical assistance program; (2) identify, package and deliver usable highway technology to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with road related problems; (3) establish, in cooperation with State transportation or highway departments and universities (A) urban technical assistance program centers in States with two or more urbanized areas of 50,000 to 1,000,000 population and (B) rural technical assistance program centers: *Provided*, That not less than four centers shall be designated to provide transportation assistance that may include, but is not necessarily limited to, a "circuit-rider" program, providing training on intergovernmental transportation planning and project selection, and tourism recreational travel to American Indian tribal governments.

"(c) FUNDS.—The funds required to carry out the provisions of this section shall be taken out of administrative funds authorized by section 104(a). The sum of $8 million per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 shall be set aside from such administrative funds for the purpose of providing technical and financial support for these centers, including up to 100 per centum for services provided to American Indian tribal governments. An additional sum of $5 million for the fiscal year 1992 shall be set aside from such administrative funds to establish and carry out a tourism and recreational travel technical assistance program in non-urbanized areas. Funds to carry out this section shall remain available until expended.".

Mr. BURNS. Mr. President, these three amendments are related to my efforts to develop an infrastructure that supports our Nation's tourism industry. For the first time in 1990 this country recorded a trade surplus of some $900 million from foreign travel expenditures, foreigners spending money in this country to see America and what it has to offer.

From a rural perspective I am here to say America has more to offer than Washington, DC, and Disneyland, but we need an adequate infrastructure on which to build our rural tourism economy and a forum with which to promote it to our foreign friends.

These three amendments I am offering today will put us on the road toward meeting these goals. Two of them are adapted from a bill I introduced earlier in Congress, and that bill was S. 540. One provides funds for planning, design, and construction of roads and trails that support tourism and recreational travel on our public lands highways.

The other establishes, among other things, a tourism and recreational travel component with the existing RTAP program.

The third amendment creates a rural tourism development foundation through which private sources can provide the resources needed to help Federal land agencies promote America's natural tourist and recreation sites on Federal lands.

I believe these three amendments complement the provisions in the bill which already aids the development of rural tourism, and I thank the managers for including these important provisions.

In particular, I want to compliment Senator SYMMS on his national recreation trails trust fund title. I was an original cosponsor of his bill, and am a strong supporter of this concept.

I ask that amendments 297, 298, and 299 be agreed to en bloc.

The PRESIDING OFFICER. Is there objection to agreeing to the three amendments en bloc?

Without objection, it is so ordered.

The amendments (Nos. 297, 298, and 299, as modified) were agreed to en bloc.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 300

(Purpose: To permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer)

Mr. BURNS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BURNS], for himself, Mr. DOLE, Mr. NICKLES, Mr. GRASSLEY, Mr. SYMMS, Mr. CONRAD, Mr. HATCH, Mr. SIMPSON, Mr. STEVENS, Mr. PRYOR, Mr. MACK, Mr. HELMS, Mr. EXON, Mr. DASCHLE, Mrs. KASSEBAUM, Mr. WALLOP, Mr. MCCAIN, Mr. BAUCUS, Mr. COHEN, Mr. BENTSEN, Mr. BROWN, Mr. WIRTH, Mr. DIXON, Mr. BREAUX, Mr. KERREY, Mr. GARN, and Mr. COCHRAN, proposes an amendment numbered 300.

Mr. BURNS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . COMMERCIAL DRIVERS LICENSE WAIVER.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in addition to the authority which the Department of Transportation granted to States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to farm vehicles contained in volume 53, pages 37313-37316, of the Federal Register (September 26, 1988), such States may extend such waivers to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer.

COMMERCIAL DRIVERS LICENSE WAIVER

Mr. BURNS. Mr. President, this amendment is identical to a bill I have introduced, S. 715, which currently has 51 cosponsors. I ask unanimous consent that a list of cosponsors be printed following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BURNS. In addition, the following Senators have asked to specifically cosponsor this amendment: Senators DOLE, NICKLES, GRASSLEY, SYMMS, CONRAD, HATCH, SIMPSON, STEVENS, PRYOR, MACK, HELMS, EXON, DASCHLE, KASSENBAUM, WALLOP, MCCAIN, BAUCUS, COHEN, BENTSEN, BROWN, WIRTH, DIXON, BREAUX, KERREY, GARN, and COCHRAN.

The purpose of this amendment is to bring much needed regulatory relief to the farm community in my State and other agriculturally based States.

It does this by giving States the authority to waive commercial drivers license [CDL] requirements included in the Commercial Motor Vehicle Safety Act of 1986 for vehicles used to transport farm supplies from retail dealers to or from a farm whether or not such vehicles are operated by a farmer. This amendment also extends the same waiver authority to States for vehicles used for custom harvesting.

I believe that the excellent safety record for farmers holds true for agribusinesses and their employees as well as for custom harvesters and their employees, and that they should be extended the same opportunity for exemption from CDL requirements. The safety concerns addressed in 1986 law are certainly legitimate, and I am in no way attempting to undercut them.

I want to be very clear on that point. This is not a Federal exemption of those requirements. All this legislation does is give the States—which are more familiar with the way our rural farming economies work—the opportunity to waive CDL requirements if they determine that the safety concerns can be met without them.

All I am asking the Senate to do is give the States whose farming economies are disrupted by the CDL requirements an opportunity to exempt farm retailers and custom harvesters from them.

I think this is a reasonable amendment and I urge my colleagues to support it.

EXHIBIT 1

Currently: 22 Democrats; 29 Republicans.

Total: 51 cosponsors.

Adams, Baucus, Bentsen, Biden, Bond, Boren, Breaux, Brown, Burdick, Coats, Cochran, Cohen, Conrad, Craig, Daschle, Dixon, Dole, Domenici, Exon, Ford, Fowler, Garn, Gramm, Grassley, Harkin, Hatch, Heflin, Helms, Johnston, Kassebaum, Kasten, Kerrey, Lott, Lugar, Mack, McCain, McConnell, Nickles, Nunn, Pressler, Pryor, Sanford, Seymour, Shelby, Simpson, Smith, Robert C., Specter, Stevens, Symms, Wallop, and Wirth.

COMMERCIAL DRIVERS LICENSE

Mr. DOLE. Mr. President, I rise once again as an original cosponsor of this important measure to aid American agriculture. This year we have 51 cosponsors and once again, the Senate stands on the verge of approving commercial drivers license waiver language without a clear prospect about what lies ahead in the House. Having blocked this commonsense legislation on several occasions, it is my sincere wish that farm State Members of Congress will make every effort to see that this legislation is approved.

As my colleagues know, this measure will allow States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm; to vehicles used for custom harvesting; and to vehicles used to transport livestock feed, whether or not such vehicles are controlled or operated by the farmer.

Nearly 2 years ago, the U.S. Department of Transportation gave States the authority to waive commercial drivers license rsequirements for farm vehicles under the Motor Vehicle Safety Act. Unfortunately, DOT did not recognize when granting this waiver that the majority of these particular seasonal agricultural activities were carried out by agricultural retail outlets, not necessarily by farmers.

DOT failed to recognize the importance of the custom harvesting industry, which many farmers rely upon to harvest a seasonal, perishable crop. The same is true for livestock feed operations which provide a cost-effective service for farmers and cattle producers.

These industries are markedly different from commercial trucking operations. Most of the driving is done off-pavement. They differ from other for-hire carriers because they only provide the initial transportation of grain from the field to storage, or to market, or to feedlots. These trucks average 15,000 miles per year and cannot be considered in the same category as commercial, long haul trucking operations.

Mr. President, farmers face enough of an economic hardship without needlessly increasing operation and transportation costs. This measure is not an exemption from commercial drivers license requirements, rather it is a commonsense approach to give States the ability to set reasonable requirements for drivers of farm vehicles—who have an excellent safety record. It is quite probable that if this measure is not adopted, crops will go unharvested, farmers will find themselves short of needed supplies, and livestock producers will find themselves unable to secure adequate feed supplies.

Mr. President, this measure has more support today than it ever has. As we endeavor to pass this for the third time in 2 years, I call on my colleagues in the House to pass this measure as soon as possible.

The PRESIDING OFFICER. Is there objection to agreeing to Amendment No. 300?

Without objection, it is so ordered.

The amendment (No. 300) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BURNS. I thank the Chair.

AMENDMENT NO. 301

(Purpose: To direct the Secretary of Transportation to review current federal highway access to border crossings between the United States and Canada)

Mr. BURNS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 301.

Mr. BURNS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

"SEC. . BORDER CROSSING STUDY.

"(a) The Secretary of Transportation shall conduct a review of current federal highways that access border crossings between the United States and Canada in order to: (1) determine whether or not they are in compliance with current Federal highway regulations and adequately designed for future growth and expansion; (2) assess their ability to accommodate increased transfer of commerce due to the United States-Canada Free-Trade Agreement; and (3) assess their ability to accommodate increasing tourism-related traffic between the United States and Canada. The review shall specifically address issues related to the alignment of United States and Canadian highways at the border crossings, the development of bicycle paths and pedestrian walkways, potential energy savings to be realized by decreasing truck delays at the border crossings and related parking improvements.

"(b) The Secretary shall issue a report of the findings of this review to the Senate En-

vironment and Public Works Committee and the House Public Works Committee within 60 days after the date of enactment of this Act."

Mr. BURNS. Mr. President, this amendment directs the Secretary of Transportation to review current Federal highways and access border crossings between the United States and Canada. Being a border State, we get a lot of these kind of complaints. We have a problem with our Sweetgrass border crossing in northern Montana.

The review's purpose is to determine whether or not they are in compliance with current Federal highway regulations and adequately designed for future growth and expansion particularly in relation to the United States-Canada Free-Trade Agreement and increasing tourism-related traffic between the United States and Canada.

The review must look at issues relating to the alignment of United States and Canadian highways, the development of bicycle paths and pedestrian walkways, potential energy savings to be realized by decreasing truck delays and related parking improvements.

The primary purpose of this amendment is directed at a particular situation in Sweetgrass, MT. The highway on the U.S. side is unsafe and dangerous at the Sweetgrass crossing. Local officials estimate that this section of highway is in violation and conflict with 35 FHWA regulations.

The situation must be resolved as it is having a negative impact on the flow of commerce and travel between the United States and Canada. Because of current delays, many clients are rerouting their products thus harming both Montana's and Alberta's trading economies.

To date, FHWA has not cooperated with the interested parties to resolve the problems at the Sweetgrass crossing.

It is my hope that this review will encourage FHWA to help resolve these issues.

I am pleased that my colleagues are willing to accept this amendment and thank them for their cooperation.

It is my understanding from local sources that some 35 Federal highway regulations are currently being violated on a regular basis at the Sweetgrass crossing. Naturally, the problems go beyond, though within, the scope of the Federal Highway Administration, and the State is working to resolve some customs issues with the Province of Alberta.

However, the FHWA does have an appropriate role and needs to look at some of the specific issues outlined in my amendment.

I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana.

The amendment (No. 301) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BURNS. Mr. President, I thank my colleagues for working with me on these issues. I think we have done two good things. The overall goal of this bill is to make our transportation efficient and make it serve the interests of our country.

I thank Taylor Bowlden on Senator SYMMS' staff, Senator CHAFEE'S staff, and the rest of the staff, for helping make these amendments possible. This will add to the transportation makeup of our country.

I yield the floor.

Mr. SYMMS. Mr. President, I thank the Senator from Montana for his tireless work and his interest in this legislation. The junior Senator from Montana is not on the committee, as his senior colleague is, but he has been interested in everything we ever did and has worked with us on the legislation.

We appreciate his willingness to make some changes in his amendments to conform to what we thought was appropriate for the bill. I compliment him for the work he did on the amendments, and I thank him very much.

Mr. President, I note that Senators are continually asking me what is going to happen, and when is the next vote going to be. I might say to my colleagues that I have another amendment that I will soon introduce. We have, of course, the one big amendment pending, the Byrd amendment, and possible modifications to that, if agreements can be reached on the problem of minimum-allocation States. I do have an amendment that I will be prepared to offer.

I am not going to ask unanimous consent to set aside the Byrd amendment at this point. But I might announce to my colleagues that I have an amendment that I believe will be noncontroversial and will be accepted by the committee. So I will just take this opportunity to explain the amendment.

This amendment would make uniform the requirements of S. 1204 relating to the division of surface transportation funds between the metropolitan and nonmetropolitan areas, the additional planning requirements imposed on metropolitan areas. When my colleagues and I, and the committee leadership, introduced S. 965, which is the predicate to S. 1204, the provision requiring the division of funds between the metropolitan areas and nonmetropolitan areas, imposing additional planning requirements for metropolitan areas, were applicable to any urban area over 50,000 in population.

Based on the concerns of myself and others of our colleagues, and of several of the witnesses that came before the committee at the committee hearings on the bill, we modified these requirements to apply only to metropolitan statistical areas over 250,000, and any area over 50,000 in population in nonattainment—with over 50,000 in population, that was in nonattainment for ozone and carbon monoxide.

My amendment would strike the language relating to the urbanized areas in nonattainment, so the required division of the surface transportation funds and additional planning requirements would be applicable only to the metropolitan areas, MA's, of over 250,000 in population. These small communities of 50,000 in size really do not have the capacity to have the metropolitan planning areas. So States will continue to program projects in those small urban areas in nonattainment.

But I believe it may be unwise to lump those in with the larger communities, the metropolitan areas, in terms of planning requirements and responsibility for project selection, and that is why we oppose them. This is an important amendment. It would give the States greater flexibility to establish project priorities on a statewide basis, and it is in keeping with the philosophy on which this legislation is based.

I hope when I get prepared, and the distinguished manager of the bill returns to the floor, that this amendment will be accepted, and this explanation can complete that.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I ask unanimous consent that the Byrd amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 308

(Purpose: To eliminate the required distribution of funds and additional planning requirements for small urban areas in nonattainment for ozone and carbon monoxide.

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 308.

Mr. SYMMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, strike after "thousand" on line 19 and continuing through "thousand" on line 23; and

On page 47, strike "And Nonattainment Areas Over 50,000 Population" beginning on line 17; and strike the language beginning after "State" on line 21 and continuing through "State," on line 24.

Mr. SYMMS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I rise in support of the funding formulas included in the legislation as reported by the distinguished chairman of the Environment and Public Works Committee.

The concept of a seemingly disproportionate distribution of funds between the States is not unique to Federal highway programs. Many Federal programs distribute funds to State and local governments, to individuals and directly to private enterprises. As an illustration I invite our colleagues' attention to a report prepared by the U.S. Department of Commerce, entitled Federal Expenditures by States for fiscal year 1989.

Mr. President, while these statistics are general in nature, I think they serve to make a valid point.

This publication gives the Commerce Department's best estimate of the distribution of Federal spending between the States, and includes tables which compare this distribution with the Department's 1989—and I emphasize 1989 population estimates. I think it puts the current discussion of a State's return on highway dollars into some realistic perspective.

Nevada, a donee State under the highway program, accounted for about four-tenths of a percent of the Nation's population, and received four-tenths of a percent of the Federal Government's total expenditures—a reasonably fair return. That is the sum composite of the all, the expenditures as outlined in this document, Federal expenditures by State for fiscal year 1989.

Some States, however, do better overall, including several of the donor States under the highway program. Virginia, for example, has 2.4 percent of the population, but received 3.4 percent of Federal expenditures. Another donor State, Missouri, has 2 percent of the population, but received 2.5 percent of Federal expenditures.

Mr. President, I could go on at considerable length to cite the statistics contained in this Government document.

Supporters of changes in the formula point out that donee States such as Nevada receive a slightly higher share of highway funds than our population may dictate. While this is true, I will point out later that there is a justification for this situation. What supporters of changes in the formula fail to mention is that there are many programs where highway program donee States do not receive a proportionate share.

To use the State of Nevada as an example, our State receives less than the four-tenths of 1 percent our population would entitle us to receive for several programs, including but not limited to child nutrition programs, education funding for the disadvantaged, Medicaid payments, AFDC payments, CDBG funds, mass transit funds, Medicare hospital insurance payments, food stamps, Pell grants, and national guaranteed student loan interest subsidiaries, to name but a few.

States that receive disproportionate funding under these programs would probably argue that they have greater needs than other States, and that these needs are not reflected in a simple statistical analysis when population alone is considered. While this is not the time to address the distribution of funds for all of these programs, I would agree that there are many factors which go into distribution of Federal funds which are not easily measured.

As these statistics show, there are disparities in the distribution of Federal funding between the States for many programs. I do not raise this issue to claim that Nevada deserves more funds from each of these programs—although that may be true for some of them. I raise this issue to show that no Federal program has the same effect on every State, and that disparities will inevitably occur in any formula that may be adopted.

The advocates of the current effort to provide a more direct return to States for highway trust fund dollars claim their proposal will make the program more fair. In fact, the targeting of the highway program for this type of treatment is just the opposite—it is remarkably unfair to States that depend heavily on highways and that depend heavily upon the Federal Government to fund these highways.

While statistics do show that some States receive a greater return on dollars contributed to the trust fund, such variations are not as great as the sponsors of the proposed changes would have us believe. A FHWA table inserted into the RECORD last week by the manager of this legislation shows that over the life of the Interstate Program, only 12 States have received back less than $1 for every dollar contributed to the trust fund.

The average return on the dollar for these 12 States was 90 cents. Due to the nature of the highway program, it is not surprising that greater disparities can arise in any particular year. As our distinguished senior Senator from New York has pointed out, however, the historical pattern is not nearly as inequitable as the proponents of this legislation have claimed.

Supporters of formula changes maintain that they do not receive back their fair share of the Federal investment in roads and highways. While it is true that some States receive back fewer dollars than they contribute, the return on motorist's investment in infrastructure cannot be measured in dollars alone. We all share an interest in a national transportation system, and what one State may appear to lose in dollars it gains in the rapid and free movement of goods and people across this vast Nation of ours.

My home State of Nevada is one of the best examples of the type of State that depends on the donor-donee relationship. In land area, Nevada is the seventh largest State in the Nation. By population, Nevada is one of the smallest States in the Nation. While Nevada has grown rapidly over the past decade, and is currently the fastest growing State in the Nation, most parts of the State are still very sparsely populated.

Many advocates of changes in the funding formulas concede the need for a variable distribution of highway funds during the construction of the interstates. My objection to this line of argument is simple: the completion of the interstates does not end the national interest in highways. Many of these interstates were built several decades ago and in many cases need to be reconstructed.

Nearly every major highway project on the State of Nevada's list of highway priorities involves one of the interstates. Many advocates of formula changes have conceded that the donor-donee relationship can be justified on the basis of the construction of the interstates—the same argument should apply to the maintenance and reconstruction of the interstates.

In addition, the national interest in highways goes beyond the interstates. While the interstates may carry the bulk of traffic between the States, other Federal aid roads are every bit as important. Travelers and goods which need to travel on the interstates need to get to the interstates. The maintenance of these roads is also in the national interest, and must be part of any national highway program.

So-called bridge States such as Nevada depend upon the assistance of donor States for the maintenance of its highways. In exchange, residents of all States, both donor and donee, enjoy the benefits of the national transportation system.

In addition to being one of the bridge States, and thus an important part of the national transportation system, Nevada has an additional claim on Federal highway funds. Over 85 percent of Nevada is owned by the Federal Government, and the Federal Government's activities in Nevada place an additional strain on our transportation system.

In fact, given the emphasis in this debate on each State's return on their trust fund contributions, the high Federal presence in my State holds another disadvantage: most fuel used by the Federal Government is exempt

from the Federal gas tax. Thus, if this debate is to center around gas tax revenues a measure of highway use, the substantial highway use by Federal vehicles in Nevada would be completely ignored. I do not at this time intend to offer an amendment to correct it, but I do think that this type of concern points to the inadequacy of the arguments being raised in favor of the proposed formula changes.

There is an additional argument of this debate that has an especially troubling implication for me. While not explicitly stated, I am afraid that the false impression has been created that portrays donee States such as Nevada as the parasites of the National Highway Program.

Nothing could be further from the truth. Nevada's contribution to the National Highway System cannot be measured in dollars alone. In addition, I do not think that any State has made a greater State and local commitment to transportation than the State of Nevada. If we take into account the local option of the State gas tax, an option exercised by nearly every Nevada county, Nevada's cumulative gas tax if not the highest ranks at the top as being the most expensive in our Nation.

Most recently, the citizens of Clark County, where Las Vegas, the principal center of population is located, approved a referendum that will raise $100 million in additional tax revenues for transportation improvements. In Nevada, and I expect in most other donee States, we are doing all that we can on the State and local level to protect and expand our investment in transportation infrastructure.

Finally, there is one change to the formula included in the committee bill which I am inclined to support, which I do not believe is inconsistent with my previous remarks. Once we agree to a distribution formula, we need to use the most recent available data to distribute the funds. Most of the factors which are used under current law, and are thus included in the committee's funding formula, are updated on a yearly basis.

These factors include vehicle miles traveled, land miles, land area, and postal route miles. The one factor which is not updated every year is population. Under the committee's proposal, census data from 1980 would be used for the next 5 years. Since 1990 data will be available to use for most of the years of the reauthorization, it should be used for the reauthorization formula and the distribution of funds under that reauthorization formula.

Mr. President, the funding formulas contained in the committee's bill are fair to all States, and reflect the importance of a National Highway Program, and should be approved by the Senate.

Mr. President, I thank the Chair.

If none of my colleagues seek recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DIXON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

AMENDMENT NO. 308

Mr. MOYNIHAN. Mr. President, I believe the pending business is an amendment by the Senator from Idaho.

The PRESIDING OFFICER. The Senator is correct.

Mr. MOYNIHAN. Mr. President, there being no objection on this side on the part of the manager, and having been offered by the manager on the other side, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? Hearing none, the question is on agreeing to the amendment of the Senator from Idaho.

The amendment (No. 308) was agreed to.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The PRESIDING OFFICER. Without objection, the motion to lay on the table is agreed to.

Mr. MOYNIHAN. Mr. President, there being no Senator seeking recognition at this point, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, may I say on behalf of my esteemed colleague and comanager at this point that the bill is open to amendment. We will ask unanimous consent that the pending Byrd amendments be laid aside, and Senators who wish to offer amendments are encouraged to come to the floor at this point and we will see if we cannot accommodate them, and we will certainly hear them all out.

Pending such an event, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I take this opportunity to say to Senators that the bill is open to amendment and it is moving rapidly to a conclusion. We have from the President a very legitimate request that we enact this legislation. He asked it be done by 100 days. If we finish our work here today, it is not to be excluded as a possibility that the House might take the Senate bill or act on its own bill and we will go to conference and we will meet the Friday deadline. But that being exigent and important, Senators should know that if they do not come to offer their amendments they might find that the bill has passed them by. We do not want that to happen. We do not want to close out anybody.

I see my esteemed coworker here has risen. I wonder if he does not share my view.

Mr. SYMMS. Absolutely, Mr. President, I might just say that we have sat here now for well over an hour waiting for Senators to come and offer amendments. At 10 o'clock tonight, Senators will be wondering when we can adjourn.

I see Senator SIMPSON is here. He has an amendment.

I yield back to the floor manager and we can start on with the Senate's business.

Mr. MOYNIHAN. Mr. President, we are very happy to see the assistant Republican leader here from the great State of Wyoming, which receives, on a per capita basis, the second highest share of any State of the highway trust fund, one that is perhaps a tribute to the size of the State of Wyoming. We look forward to the amendment. He can be assured that it will be favorably regarded, I believe, on both sides of the aisle.

Mr. SIMPSON. Mr. President, it is always a joyful thing to walk into the Chamber and be received so magnificently, so generously and kindly by my friend from New York and my friend from Idaho.

We do consider ourselves extraordinarily fortunate because of the Great Compromise that went on in this Chamber many years ago, because it gave Wyoming the same vote as New York. And the pleasure of that has been working with the Senator from New York since I have been here, since 1978, when I was elected, came here in 1979, and then Senator SYMMS joined us the next term.

The Senator from New York and the Senator from Idaho, I say again—and it is not because of what is in here for Wyoming.

We are a State with three Interstate Highway Systems. And the Senator from New York knows so well, and the Senator from Idaho, that everybody in the United States uses them. We are a tourism State. We have I-80, I-90, and I-10. I would think it is one of the largest in mileage of interstates of any interstate in the United States.

So it is true about the per capita money we receive from the program.

But this is a National Highway System, and we are very pleased to have the New Yorkers and the Iowans and the Illinoisans come to Wyoming whenever, bringing money and other attributes. We will treat them very fairly. But we have been treated fairly here.

I think, when you consider we have here two senior Senators, from a most populous State and one of the least populous, and that they have worked for years together, trying to formulate various highway measures and present them to us, I think they have done a very special job.

AMENDMENT NO. 309

(Purpose: To provide for a study on the disadvantaged business enterprise program)

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection the pending amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for himself and Mr. WALLOP, proposes an amendment numbered 309.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the Disadvantaged Business Enterprise program of the Federal Highway Administration (hereafter in this section referred to as the "DBE program"). The study shall include—

(1)(A) a determination of the percentage of disadvantaged business enterprises that have enrolled in the DBE program that have graduated from the DBE program after an enrollment period of 3 years;

(B) a determination of the number of disadvantaged business enterprises that have been enrolled in the DBE program for a period greater than 3 years; and

(C) a determination as to whether the graduation date any of the disadvantaged business enterprises described in subparagraph (B) should be accelerated;

(2) a determination of which State transportation programs meet the requirement under the DBE program for 10% participation by minority-owned businesses and woman-owned businesses by contracting with out of State contractors in lieu of in-State contractors;

(3)(A) a determination as to whether adjustments in the DBE program could be made with respect to—

(i) Federal or State participation in training programs; and

(ii) Meeting capital needs and bonding requirements; and

(B) with respect to subparagraph (A), in the case where adjustments could be made, recommended adjustments that would continue to encourage minority participation in the program and would improve the success rate of the disadvantaged business enterprises;

(4) recommendations for additions and revisions to criteria used to determine the performance and financial capabilities of disadvantaged business enterprises participating under the DBE program; and

(5) a determination of additional costs incurred by the Federal Highway Administration in meeting the requirement for 10% participation, as described in paragraph (2).

(b) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report on the findings of the study described in subsection (a) to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Public Works of the House of Representatives.

Mr. SIMPSON. Mr. President, let me quickly dispose of this, I hope. This is with regard to the disadvantaged business enterprise issue. These are known as DBE's. They are guaranteed not less than 10 percent of all amounts authorized to be appropriated under the highway bill.

A DBE, disadvantaged business enterprise, includes minority-owned businesses as well as women-owned businesses. Although the program, some say, smacks of quotas and invites, also, allegations of reverse discrimination, most States do meet the 10 percent DBE setaside. Even the State of Wyoming, in which it is sometimes difficult to perceive how we could meet it because we have a very low percentage of blacks—we have a sizable percentage of Hispanics, many more Hispanics than we have Native Americans—but sometimes it is very tough for us, in the past, to meet the DBE requirements. But we have met those and our highway department has done an excellent job of straining to do that since the program began in 1984.

Although the DBE program sets, I think, a very laudable goal, which I support, of assisting truly disadvantaged businesses, there is great concern, I think, that there may be abuse within the program and that it really is not helping the way it might have been intended.

The businesses are out there but they continue to be undercapitalized and underfunded. There is a very high turnover. Some States like Wyoming lose in-State business to out-of-State contractors in order to meet the DBE requirement.

So, I think it is a program requesting and calling for some oversight from us. That is the purpose of this amendment.

We all have certain questions and concerns but the data is just not there to answer us. This amendment will provide a number of answers, I hope. It directs the General Accounting Office to study five areas very briefly defined as this:

How many disadvantaged businesses actually graduate from the DBE program and go on to become strong and independemt companies? That is one.

Two: Which States lose in-State business to out-of-State contractors in order to fulfill the DBE requirement?

Three: What adjustments could be made with regard to training, meeting capital needs and bonding requirements—very important. Bonding requirements? DBE's sometimes say they cannot meet those requirements where the established contractor can. How do they do that, in order to prove the success of the program?

And, then, how do we determine the additional cost to the highway program, which is required to meet the DBE requirements?

Are we paying more to these disadvantaged businesses than we would pay to other businesses? I do not know.

But this study should help, somewhat, to answer that question. I presented it at the markup in committee. The two floor managers were aware of it.

I do not rise today in any opposition to the program. But I do have these questions, I think serious questions regarding how it is working; if it really is assisting the people in the manner in which it was intended, and if it is adversely impacting other folks in a way we had not intended.

So I hope this study will be helpful to all of us, addressing our questions and concerns. We can then go forward with any changes or alterations, once we have had these facts and figures presented before us.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, on this side of the aisle, we welcome this amendment. If you believe in these programs, you want them to improve. If you want them to improve, you need to know more about them.

There is a wide range of questions that can be asked. Part of the elemental difficulty of allocating resources by ethnic group or gender group is that you can declare a group to be disadvantaged but you cannot address, very clearly, the individuals within that group. So, is the Hispanic Ph.D., graduate of engineering from the Colorado School of Mines—is that a disadvantaged person? Obviously not. Is that a group represented in these enterprises? Probably so.

But can we not learn more about it? We should never, never fear inquiry in these matters. To the contrary, what we should fear is the appearance of not wishing to know more than is known.

I would like to ask my friend, in the original draft there was a part C that would have prohibited the Department of Transportation from issuing the regulations, pending the receipt of the report. I believe that has been dropped, has it not?

Mr. SIMPSON. Mr. President, that provision has been dropped in the final draft. I want to commend the staff of the managers of the bill for assisting in

the drafting, in order to review that. That has been omitted.

Mr. MOYNIHAN. Mr. President, there is no objection of any kind on this side.

The PRESIDING OFFICER. Is there further debate? The Senator from Idaho.

Mr. SYMMS. Mr. President, I rise to offer my endorsement to Senator SIMPSON's amendment and encourage that it be immediately agreed to. I thank him very much for his efforts in this committee to help us get this bill this far along.

Mr. WALLOP. Mr. President, I am pleased to join my friend and colleague, Senator SIMPSON, in adding an amendment to S. 1204, the Surface Transportation Efficiency Act, to authorize a study of the Disadvantaged Business Enterprise [DBE] Program.

Recently, Senator SIMPSON and I were contacted by Don Schmalz, a subcontractor in Cody, WY, about two Federal highway contracts awarded with disadvantaged business enterprise [DBE] requirements. As my colleagues may be aware, current law requires that 10 percent of Federal contracts in each State in any fiscal year must have DBE participation. Mr. Schmalz submitted bids for subcontracts on two Federal highway projects, but was not awarded either because the prime contractors were required to solicit DBE's in order to meet the 10-percent goal. In both instances, Mr. Schmalz was also the low bidder, a factor which only served to add to his frustration.

In discussing these contract awards with the Wyoming Highway Department, concerns were raised that this 10-percent goal was set with little or no rationale for its justification.

We all agree that the use of minorities on Federal contracts should be encouraged, but this goal may be difficult to meet in States with a limited number of minority and women owned firms and/or a minority population of less than 10 percent. As a result, I would venture to guess that a large number of States are meeting this goal on a regional, rather than State-by-State basis. The study we are requesting of the General Accounting Office will focus on that particular issue.

In addition, this study will determine whether or not additional costs are borne by the Federal highway program in order to meet the 10-percent DBE requirement and request recommendations and suggestions for new criteria to use to determine performance and financial capabilities of firms necessary to perform the work of the contract. No further changes would be permitted in the DBE Program until the study is submitted to the Environment and Public Works Committee of the Senate and the Committee on Public Works and Transportation of the House.

While this study may not immediately address the specific problems of Don Schmalz and other small contractors, it is my hope that this study will make concrete recommendations to encourage necessary DBE participation, while more adequately reflecting a State's ability to meet the Federal contracting goals.

The PRESIDING OFFICER. Hearing no further debate, the question is on agreeing to the amendment.

The amendment (No. 309) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I thank the floor managers for their courtesy and their accceptance of the amendment. I most appreciate it.

Mr. MOYNIHAN. Mr. President, it falls to me once again to put Senators on notice that this bill is moving along. If it has moved out of this Chamber before certain amendments have been considered, it will not be for lack of effort on the part of the managers to hear anybody on any matter.

No one having appeared, we thank the Senator from Wyoming for adding to our work product for the middle of the afternoon.

Once again, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 310

Mr. MURKOWSKI. Mr. President, I have an amendment to the Surface Transportation Efficiency Act relative to an amendment which I understand has been accepted concerning the Alaska Highway which would delete authorization for construction of the Alaska Highway in Canada. The authorization would be reinstated by my amendment.

The Alaska Highway is the only paved road connecting Alaska with the rest of the United States. That highway is still under construction, I might add celebrating its anniversary this next year.

The United States and Canada have agreed to construct and maintain the link between my State of Alaska and the remainder of the United States. But the agreement depends upon the authorization being deleted by S. 1204. This section of highway is funded from the general fund, not from the highway trust fund, and those funds pass directly to the Government of Canada rather than to the State of Alaska.

I do not have to elaborate on the strategic importance the Alaska Highway or the recognition that there is no land route without going through Canada to supply military goods and equipment to our military in Alaska as well as the critical contribution it provides for the economy of Alaska, as well as providing an opportunity for thousands of tourists to visit our State.

The funds for this amendment, again, are from the general fund, not the highway trust fund. The amendment does not allocate funds to the State; it provides funds to the Government of Canada, as I said.

I urge favorable consideration of the amendment which, as I have indicated, I understand has been cleared by the other side.

The PRESIDING OFFICER. Will the Senator send the amendment to the desk?

AMENDMENT NO. 310

Mr. MURKOWSKI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside and the clerk will report.

Mr. MOYNIHAN. Mr. President, may I suggest the absence of a quorum, so we might inquire the details of the amendment?

The PRESIDING OFFICER. Is there objection? Hearing none, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, I believe the desk has the corrected copy of the amendment. I thank my colleague from New York. The Senator from Idaho I believe has concurred in the amendment.

Mr. SYMMS. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 310. On page 102, strike item (16) of SEC. 125. ("Section 218, relating to the Alaska Highway").

Mr. MOYNIHAN. Mr. President, we have no objection to the amendment on this side.

Mr. President, the spirit of this law, as we hope and expect it will become, is that the States understand their own circumstances best and are properly held accountable for the use of their resources.

The Senator from Alaska has the enviable reputation in this body for knowing his State and knowing how he thinks it might best be run.

It is a unique State, not unique as yet quite comparable to another, but Alaska ranks first among all in size

and disparity of terrain. It is entirely within the spirit of this whole Surface Transportation Efficiency Act if Alaska chooses to expend its resources in this way as being the most efficient. That is fine.

We have no objection. To the contrary, we encourage this, understanding always whatever use it is, the States are accountable to their own citizens and to their own judgment.

The PRESIDING OFFICER. Is there further debate?

Mr. MURKOWSKI. I thank my colleague. I appreciate his understanding, and I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 310) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 311

Mr. MURKOWSKI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside and the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 311.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, section 112, TOLL FACILITIES, subsection (b) is amended to read as follows:

SEC. 129. TOLL FACILITIES.

(b) FEDERAL SHARE PAYABLE.—Except as provided in subsection (e), the Federal share payable for any project under this section shall not exceed 35 per centum of the cost of the project for construction of new toll facilities, provided that, for the purposes of subsection (d), the Federal share may be increased by a percentage of the remaining cost that is equal to the percentage that unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, in a state are of its total area, and shall not exceed 80 per centum of the cost of the project for rehabilitation of existing toll facilities or conversion of existing free facilities to toll facilities, provided that for the purposes of subsection (d) the Federal share may be increased in accordance with the provisions of section 120(a), as amended.

Mr. MURKOWSKI. Mr. President, much of Alaska is made up of islands, the Alexander Archipelago in southeast Alaska and the Aleutian Island Peninsula. Alaska has more than 47,000 miles of coast line, and the Alaska Marine Highway connects most of the small towns and villages along this coastline to the rest of Alaska. For many people in Alaska, the Alaska Marine Highway is the only highway for many of the villages and towns in coastal Alaska.

The amendment that I am proposing, funds Alaska's ferry system in the same way that interstates and primary highways are funded. I emphasize that this amendment gives the State the option of spending STP funds for its ferry system with the same match of Federal funds as it does for other highways and roads in Alaska. This amendment does not increase the State's allocation of Federal highway funds.

The Alaska Marine Highway is vital to the economy and well-being of these towns and villages. People, food, cars, trucks, boats, the mail are all shuttled around the State by the ferry system. At ferry terminals in Alaska, you can see the hopes and dreams of a State. Families moving to the State, with their cars so loaded down they barely clear the ramp. The high school basketball team traveling to another town for a game. People going to town to shop, see the doctor, or conduct business. The Alaska Marine Highway is that link that ties the coastal communities together.

Each year, the Alaska Marine Highway carries 400,000 passengers and 110,000 cars, trucks, and vans. There are eight ferries coursing a 3,500 miles long route. The State budgets $70 million for the Alaska Marine Highway. Revenues for the system are about $35 million annually. The remainder comes from State and Federal funds, including a refurbishing fund established by the State in 1990.

The formidable terrain and excessive costs of connecting the numerous islands of Alaska has prevented us from building a tradition highway system.

I repeat, this amendment lets the State of Alaska use Federal funds for the Marine Highway in the same proportions as it uses Federal funds for other highways and does not alter the total allocation of funds to Alaska.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. MOYNIHAN. Mr. President, once again, to state that in the spirit of this law, this amendment is offered, and it speaks to the unique concerns of a State with such vast amounts of coastline. If some measure of ferry service is indicated, if that is the best mode of transportation, for the people of Alaska, so be it.

We endorse the amendment.

Mr. SYMMS. Mr. President, we endorse the amendment, also. I share the view of the distinguished floor manager.

Mr. MURKOWSKI. I thank the Senator from Idaho, and I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 311) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania, Mr. SPECTER.

AMENDMENT NO. 312

(Purpose: To take the Highway Trust Fund out of the calculation of the budget deficit)

Mr. SPECTER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The pending amendment will be set aside, and the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 312.

Mr. SPECTER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . BUDGETARY TREATMENT OF HIGHWAY TRUST FUND.

(a) SHORT TITLE.—This section may be cited as the "Highway Trust Fund Improvement Act of 1991".

(b) EXCLUSION OF TRUST FUND FROM DEFICIT CALCULATION.—

(1) IN GENERAL—Notwithstanding any other provision of law, the receipts and disbursements of the Highway Trust Fund allocable to the transportation-related operations of such Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) TRANSPORTATION-RELATED OPERATIONS DEFINED.—For purposes of paragraph (1), the receipts and disbursements allocable to the transportation-related operations of the Highway Trust Fund are the disbursements, and the receipts allocable to such disbursements, under—

(A) paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 (relating to expenditures from the Highway Trust Fund for the Federal-aid highway program); and

(B) paragraph (3) of section 9503(e) of such Code (relating to expenditures from the Mass Transit Account).

(c) TRUST FUND TREATMENT IN THE CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall include allocations under section 302 of this Act of the outlays and revenue totals of the Highway Trust Fund allocable to the transportation-related operations of such Trust Fund, as described in subsection (b)(2) of the Highway Trust Fund Improvement Act of 1991, but shall not include such totals in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.".

(d) EXEMPTION FROM SEQUESTRATION ORDER.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after the 28th undesignated paragraph (relating to higher education facilities) the following new undesignated paragraph:

"Highway Trust Fund (20-8102-0-7-401; 69-8019-0-7-401; 69-8020-0-7-401; 69-8099-0-7-401;".

(e) APPLICABILITY.—Subsections (b), (c), and (d), including the amendments made by such subsections, shall apply with respect to fiscal years beginning after September 30, 1991.

(f) NOT DIRECT SPENDING.—This section and the amendments made by this section shall not be construed authorizing any direct spending as defined by section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Mr. SPECTER. This amendment would require that the highway trust fund, the mass transit trust fund, be placed off budget so that the funds which have been allocated in trust for highway construction would be used for that purpose, and the funds allocated for mass transit would be used for that purpose.

This amendment is identical to one which was offered on April 25 on the budget resolution, which passed by a voice vote. When that amendment was offered, it awaited its turn, and it came up late on a Thursday evening. The amendment was accepted, but it seems to me that we need to put this matter on the record in legislation where it would make it binding on the fiscal policy of the United States.

The potential problem raised by this amendment is that it has a budget impact in terms of the effect on the deficit, because, at the present time, there is substantial funding which is used for accounting purposes. You might call it a double entry, but you really would call it two sets of books, which gives a false appearance of what the deficit really is.

Mr. President, at the beginning of fiscal year 1991, under CBO baseline assumptions, the total unexpended balance of the highway trust fund was $16.8 billion: $9.6 billion in unexpended funds from the highway account of the trust fund, and $7.2 billion in the transit account.

By the end of fiscal year 1991, it is estimated that there will be $19.6 billion, with $11.1 billion in the highway account and $8.5 billion in the transit account.

Mr. President, these funds are allocated in these trust accounts for the specific purpose of highway construction and mass transit use. If it were anybody but the Federal Government, the utilization of such funds aside from the purpose for which intended would be a fraudulent conversion and would amount, in fact, to a crime.

The Federal Government utilizes this bookkeeping procedure to take moneys which are really supposed to be used for highways and mass transit, and uses it as a deficit offset, which deludes the American people as to what the full extent of the deficit really is.

We have an urgent need in our society for highway improvements. There is not a State among the 50 that does not urgently require more construction of highways, repair of highways, and repair of bridges.

Similarly, on the subject of mass transit, there was urgent need for more funding for mass transit, which would provide an alternative for highways, for the congestion on our highways, which would vastly improve the problems of pollution and environmental concerns. It is high time, Mr. President, we move ahead on taking these trust funds off budget which will in turn allow us to use these funds for their intended purpose.

My late distinguished colleague, Senator Heinz, took the leadership in moving the Social Security Trust Fund off budget. I believe that the highway and transit trust funds should also be off budget, so there would be a straightforward process of utilizing these funds for the purposes for which they were intended.

I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. SYMMS. Mr. President, I compliment my colleague from Pennsylvania for this amendment, and I just point out to my colleagues that the distinguished manager of this bill, Senator MOYNIHAN, many, many times in our committee, when this issue came up, pointed out that the tragedy of this whole thing is that there is no money in the trust fund, because it has been spent on something else. It is a bookkeeping entry, and there is a delusion out across America that somehow there are billions of dollars sitting in the trust fund waiting to be released and spent to fix the Nation's roads and bridges.

So I have long been a supporter of the position of the Senator from Pennsylvania, and I support it now, because I think that we should do it this way, and we should be making a bigger commitment.

I say to my colleague from Pennsylvania, Mr. President, that as a member of the Finance Committee, when the time comes that we authorize the continuation of the funding to pay for this legislation that is pending before us, this Senator intends to offer an amendment in the committee, and on the floor, if it is not successful in the committee, to return the other 2½ cents that has been diverted to nontransportation funding, which is occurring as we speak. That will even make the situation more important that the Senator's amendment should be passed and put into law.

So I am sure there will be some opposition from the chairman of the Budget Committee and ranking member of the Budget Committee on this amendment. But as one Member of the Senate—not speaking for the committee—I favor the position the Senator from Pennsylvania has brought before us today, and I intend to support the amendment.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from New York.

Mr. MOYNIHAN. Mr. President, it would be difficult for me to take objection to the purposes which the learned Senator from Pennsylvania advances by his amendment. I serve as chairman of the Subcommittee on Social Security and have spoken to the diversion of Social Security trust funds to the general purposes of government. I have done so on this floor for some years. The Senator from Pennsylvania said that, in a private arrangement, such diversion as goes on today in the trust fund and others would be fraudulent diversion and criminal. It is so elementally the case.

On the other hand, I have to observe that, having taken the Social Security trust funds off budget, we have not changed the pattern of the Federal Government using those funds as if they were general revenue, which they are not. Those funds have individual names on every account. President Roosevelt established it with that very much in mind; there would be no notion of these as general funds. Rather, they were accounts by individuals with their names and their Social Security numbers.

Even so, I think, as the Senator from Idaho observed, we might anticipate objection from the chairman of the Committee on the Budget and his ranking member, our friends from Tennessee and from New Mexico.

If no Senator wished to debate this further, I shall suggest the absence of a quorum during which time we can request the presence of one or both of those previously mentioned Senators to see if we cannot hear their view.

So, Mr. President, I respectfully suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it it so ordered.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that we might set aside the amendment proposed by the senior Senator from Pennsylvania in order to consider an amendment by the Senator from Nevada.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 313

(Purpose: To allow the use of Highway Trust Funds for the purpose of Bureau of Indian Affairs road sealing projects)

Mr. MOYNIHAN. Mr. President, on behalf of the senior Senator from Nevada, a fellow member of our committee and a person actively involved in formation of the committee bill that is on the floor now, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for Mr. REID, proposes an amendment numbered 313.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . ROAD SEALING ON RESERVATION ROADS.

Section 204(c) of title 23, United States Code, is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend funds apportioned under this section from the highway trust fund for the purpose of road sealing projects.".

Mr. MOYNIHAN. Mr. President, may I explain to the Senate the simple purpose which Senator REID has with this amendment. There are situations where the best use of Federal funds on Indian lands for surface transportation is a process called road sealing, which produces a durable, hard surface and which ought to be available in those circumstances.

The Federal Highway Administration, interpreting the existing law, has, however, decreed that such road sealing is merely routine maintenance and therefore Federal funds are not available for that purpose. This amendment would change that ruling and allow this option in appropriate settings. We think it is a good amendment, and we urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. SYMMS. Mr. President, I have no debate. I support the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 313) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, once again, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WOFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 312

Mr. WOFFORD. Mr. President, I rise to speak in support of the pending amendment offered by my friend and colleague from Pennsylvania, Senator SPECTER. Billions of our taxpayers' dollars are sitting in the highway trust fund in the mass transit account, untouchable by the States because this money is being used to mask the true size of the Federal budget deficit.

Mr. President, it is time for us to be honest with the American people. It is time for us to take a step to correct years of fiscal sleight of hand. Withholding these balances from vitally needed transportation projects is like highway robbery—our roads, bridges, and mass transit systems are literally crumbling before our eyes. Instead of rebuilding them, we are taking these dedicated funds to mollify the taxpayers about the size of the Federal deficit.

But people will not buy it, and neither should we. Our working families are paying billions of dollars to ensure that our Nation's highways and our mass transit systems are safe and efficient. But in the course of the debate on this transportation legislation, we have heard over and over again about highways and bridges in dangerous states of disrepair and transit systems going broke. Yet the administration actively blocks an increased investment in transportation because of its perceived effect on the budget deficit.

Our taxpayers know all about the deficit, Mr. President. We know and our citizens know that they and their children and grandchildren will be paying for it well into the next century. And they know that they are not getting their money's worth for the gas taxes they pay at the pump each day. Withholding transportation funds that are owed to the States may help balance the books in a shortrun sense, and I might say a fraudulent sense. But we owe the American people the full benefit of their transportation dollars for the long haul. If we can bail out the S&L's, then certainly we can help our working men and women get to their jobs, help our children get to school, and help our companies get their products to the buyers who want them. We owe them safe roads and bridges, clean and efficient transit and a fiscal policy based on fact, not fiction.

For these reasons, I strongly support the Specter amendment.

Mr. SPECTER. Mr. President, I thank my colleague, Senator WOFFORD, for his support of the pending amendment. I had suggested that there was a fraudulent conversion in not allocating moneys from the trust funds for the purpose for which they were intended. I think Senator WOFFORD has been much more graphic in calling it highway robbery. Highway robbery sounds a lot more emphatic than fraudulent conversion. I think that highway robbery is what it is.

It even drew a smile from the distinguished Senator from Idaho [Mr. SYMMS].

Senator MOYNIHAN after my initial speech made a reference to it being a matter of fraud to take moneys from trust funds.

So I urge my colleagues, when the time comes to vote on this amendment, to really focus on a very basic and fundamental proposition; that it is a matter of fraud, highway robbery; that it is really criminal to use trust fund moneys for some purpose other than that for which they were intended. It is not a matter as if the highways were not in enormous disrepair and bridges not in need of tremendous repairs and mass transit not in need of funds. So when Senator WOFFORD says, let us be honest with the American people, I think that is a good characterization and conclusion.

Mr. SYMMS. Will the Senator yield?

Mr. SPECTER. For a question?

Mr. SYMMS. Yes.

Would the Senator also think we might call this the great train robbery?

Mr. SPECTER. I think as the rhetoric accelerates, Mr. President, it becomes more accurate, with each new phrase added, to describe in emphatic criminal terms the status where the trust funds are not being used for the purpose for which they were intended. So I would adopt the comment made by my colleague from Idaho, also.

Mr. WOFFORD. Let me repeat a comment by a great President of the party represented by Senator SPECTER, President Abraham Lincoln. I believe his comment was: You can fool all of the people some of the time; you can fool some of the people all of the time; but you cannot fool all of the people all of the time.

It is time to stop fooling the American people and pretending that our budget deficit is less than it is at the price of holding these funds back from the transportation system we need.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanious consent that the order for the quorum call be rescinded.

The PRESIDING OFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I do not wish to be repetitive. Neither do I wish to appear hectoring. But it is a

fact that we have been on this floor all afternoon, beseeching our colleagues to come forward with amendments if they have them, and making the point that this legislation is moving and it may move so fast, of a sudden, that opportunities will have been lost. We do not want that to happen. We cannot guarantee it will not. We do say come now, and you may be sure it will not.

I understand we have an amendment from the senior Senator from Pennsylvania on which he has spoken, and our colleague, the junior Senator from Pennsylvania, has spoken as well. We are awaiting the chairman and ranking member of the Budget Committee, if they find it convenient to come. If not, we will just dispose of the matter.

Again, I only wish to say opportunities are here now which may not be here indefinitely. I make that statement for about the fifth time this afternoon.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I see the distinguished chairman of the Budget Committee on the floor. Might I ask him, the Senator from New Mexico would like to return to appropriations and that is why I wanted to speak, but I will certainly defer to him if he is ready to speak at this time.

Mr. SASSER. Mr. President, I will be pleased to defer to the distinguished Senator from New Mexico if he wishes to speak.

Mr. DOMENICI. Mr. President, I will try to be brief. I am hopeful that the distinguished chairman of the Budget Committee will make a point of order against this amendment, and I assume he will. I think it violates the Budget Act and budget process in more than one way. But any of the points of order are 60 vote points of order. I think that such should be the burden of an amendment of this magnitude.

First of all, we have 165 trust funds. The Senator from Pennsylvania now seeks to remove two of them from the calculations under the Budget Act and under the 5-year agreement that was entered into last year among the President and Democrats and Republicans in the Senate and the House.

Essentially, what this will do, in a nutshell, let us assume the annual expenditures under this trust fund will be $15 billion to $16 billion next year. We will just talk about one at a time. If we remove this from the budget agreement, we will then essentially destroy the agreement because what we will have done is taken $15 billion out and, thus, there would be $15 extra billion to spend under the caps and agreements entered into last year.

There may be some who would like to do that, but, obviously, that is a very large amount of money. Let me give the Senate an estimate.

This year, that whole domestic account, my recollection is, it is about $212 billion. So you would take 15 to 16 out and permit that $212 to remain intact and spend it for other programs.

So, essentially, we would have destroyed the agreement that thus far all the Democrats and Republicans in the Senate, leaders of the Senate, the President of the United States, the leadership in the House are all saying let us keep that 5-year agreement intact.

As a matter of fact, it has even been strong enough, Mr. President, that during this recession it has held. We have voted twice in the Senate to remove the inhibitions of wild spending which we could have done because of the nature of the economic situation and in both times, very few Senators, less than 10—in fact, the first time it was only 1 or 2 and the second time, 5 or 6—who voted to suspend the enforcement mechanisms that are in the 5-year agreement, probably the most significant, responsible agreement in modern history. And the country needs it. It is not as if we did it because we are prudent and great leaders. It was high time we put an agreement of that sort in place.

Make no bones about it, taking this entire trust fund, the outlays, the receipts, taking them all off budget will destroy that agreement. I do not think there is any doubt about it. We will not have an agreement. One may just as well come up here and introduce on the highway bill a resolution saying we have no 5-year agreement. It will have no worse effect than this amendment, which effectively in a roundabout way will destroy it.

I say to those who want highway funds expended, the distinguished chairman of the Appropriations Committee, Senator BYRD, is probably the strongest proponent of more infrastructure expenditure in this Nation. Frankly, I do not believe he wants to destroy the 5-year agreement. As a matter of fact, he has thought it was important enough to even have a tiny sequester the other day because we spent $5 million more than we were supposed to, and rather than call it de minimis, he said let us have a sequester. I say to my friend the sequester was 0.0013 or less, and yet we had it because we want to enforce the agreement.

So I believe this is the wrong time, if there ever is a good time, to break the budget up into more pieces. I do not think there really is, but this is absolutely the wrong time. I will support the chairman of the Budget Committee, who I hope will make a point of order. I think the Senate should once and for all indicate loud and clear that they do not want this to occur.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. I want to thank my distinguished friend from New Mexico for his observations, and let me say, at the appropriate time I do intend to make a point of order.

Mr. President, what we are faced with is the beginning of the end of the budget summit agreement and the beginning of the end for fiscal discipline if we should sustain the wishes of the distinguished Senator from Pennsylvania and remove the highway trust fund from the unified Federal budget or, in effect, put it off-budget.

If we are going to start taking the highway trust fund off budget, why stop there? Why do we not take all of the trust funds off budget? Why do we not begin to add the civil service retirement to the highway trust fund and take that off budget? Why should the highway trust fund be off budget and the civil service retirement fund be on budget?

And while we are taking the civil service retirement off budget, let us also take the military retirement fund off budget. Let us really just get serious about this and do away with the total unified budget. If we adopt the Specter amendment, we will be starting down that road.

Let us take Medicare off budget. I think we can make a strong, clear, convincing and compelling case that Medicare ought not be part of the unified budget. We collect funds to be used for the purpose of Medicare to be put into a trust fund, to be used for that purpose, so let us just take that off budget.

How about the unemployment compensation proceeds that are collected? Why do we not take those off budget, too? If we are going to take the highway trust fund off budget, why should we leave the unemployment compensation funds that are collected on budget?

While we are at it, Mr. President, let us just take the aviation trust fund off budget also. Let us make this thing symmetrical all the way around.

The truth is if we take all of these trust funds off budget, if we destroy the unified budget while we are also destroying the budget summit agreement, we are going to be sitting around here looking at Federal deficits in the neighborhood of about $600 billion.

This country is wallowing in a recession now. The administration tells us we bottomed out. It is my understanding that we bottomed out all right. We are going to be bumping along this bottom for a long, long time before we start getting any relief from it.

What does it tell the financial markets, those who lend money, those who

set interest rates, if we are going to take everything off budget and we are simply going to drive the Federal deficit up through the roof?

Clearly that does not make any sense. What we are saying here is if we take the highway trust fund off budget—and we all sympathize with the wish of the distinguished Senator from Pennsylvania to spend more money on the infrastructure. I am one of the leading advocates of that here in this body. I supported the distinguished chairman of the Appropriations Committee in his efforts to spend more money for infrastructure, for roads, bridges. I supported him when we had that argument and that debate in the budget summit agreement.

I might say, Mr. President, the highway program has fared very well with the present budgetary treatment it receives. Last year the Appropriations Committee increased highway obligations by over $2.1 billion and the committee is likely to increase spending for the programs again this year. In fact, I have no doubt that it will. The appropriate vehicle for increasing expenditures from trust funds is by raising the obligation.

Mr. President, if we should follow the course being urged upon this body by my friend, the Senator from Pennsylvania, today we would raise the deficit immediately in this fiscal year by $2 billion.

Once we take the highway trust fund off budget, I can predict you are going to see a whole host of amendments here as legislation moves through this body to take everything off budget; as I said, the civil service retirement, military retirement, Medicare, unemployment, the Aviation Trust Fund. And this would raise the deficit by billions of dollars and would radically reduce our control over a very, very substantial portion of Government spending.

Mr. President, at the appropriate time—I see the distinguished Senator from Texas is on his feet, and also the distinguished Senator from New York—I will raise a point of order.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I think the leadership of the Budget Committee has made a very clear presentation here. I do not want to belabor it or duplicate it.

Let me say this. Ever since I came to the Senate there has been an argument that we were building up balances in the highway trust fund. I have been a strong proponent of spending resources raised for the purpose of carrying out the functions of the highway trust fund, such as building roads, and building mass transit.

I have always thought it was wrong to build up balances in the highway trust fund to, in essence, allow budgetary room for spending on other programs.

But I remind my colleagues that the real effect of the amendment pending is not to free up funds for highways. In fact, we fully commit the highway trust fund revenues over the next 5 years for that purpose under this bill.

The bill before us goes further than any bill that has been considered in the 7 years I have been in the Senate in spending money from the highway trust fund for the purpose that it was raised, and that is one of the reasons I am supportive of the President's highway bill.

But, Mr. President, by taking the highway trust fund off budget, what we do is setup the procedure for breaching the spending caps.

The money freed up by taking the trust fund off budget is not going to go to highways. This amendment is not going to cause more money to be spent on highways. By taking the spending on highways out of the caps, this amendment is going to make it possible to instead spend money on other things. So this is not a highway amendment. This is a deficit amendment.

I think it is vitally important that the point of order be sustained and that we see this amendment fall. I repeat again: The highway bill before us spends every nickel it will bring in in new revenues over the next 5 years. It does exactly what we should have been doing to begin with. But let us not use a past concern as an excuse to destroy fiscal restraint, and in the process, force the deficit up and damage the economy.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I rise briefly just to comment on the remarks of the Senator from New Mexico and the Senator from Tennessee about the nature of our budget situation, and to try to put this bill in that context. For that purpose, we have provided an introductory statement to the bill which tried to set forth the constraints as we understood them on this bill.

We observed the crumbling infrastructure has become part after the political imagery of American life. At any point of the political compass or spectrum you will find one of the needs invariably invoked is our Nation's crumbling infrastructure. We do not deny that.

To the contrary, we assert we have been in a long period of disinvestment, using up the infrastructure investment of the country, running it down, not even keeping to a constant level.

The best study we have on this is the work of the National Council on Public Works Improvement, established by the Congress. Their report was called "Fragile Foundations." They reported that Federal expenditures for highways, to take one segment of infrastructure, reached a peak in 1965 of some $40 billion a year. That was the high point.

It has been down ever since. We are now running at $10 billion a year in constant 1982 dollars. From $40 billion in President Johnson's time to $10 billion in President Bush's time. That is a big drop.

The case for large new expenditures is certainly legitimate. But what we tried to say, and I do not know if the Nation will ever absorb this, is that there is no money beyond the money we are talking about.

I ask my friend from Tennessee to hear this one paragraph. Speaking of the constraints we deal with, one is budgetary:

> The United States Government for the present and foreseeable future cannot and will not embark on the epic enterprises that came with such seeming ease to Roosevelt and Eisenhower.

I referred to President Roosevelt, who proposed the Interstate System. President Eisenhower created the trust fund that set it going forward. We continue.

We have spent our money on other things and are now much in debt. And there you are. We trebled the national debt in the 1980's. In about 3 year's time, I think, interest on the debt will be larger than the defense program. We are a debtor Nation, thanks to all the hurrah and hoopla about a balanced budget and cutting waste, fat, and abuse.

All that rhetoric was a screen for indescribable irresponsibility and wild spending by those who most spoke the gospel of frugality, reserve, the deferral of satisfaction. It went wild, and they concealed it with rhetoric.

The reality is now with us. We say here we have spent our money on other things, and are now much in debt.

We have $105 billion. That is a lot of money. It would not be a lot for some countries. The Japanese would not find it a lot of money over 5 years, but we do, because we spent it in the last decade. We are living in that reality.

At least Harry Hopkins had the honesty to say: We will tax and tax and spend and spend and elect and elect. That is honest. They spent and spent and borrowed and borrowed and elected, elected, elected. And they left their country broke.

But it does bespeak us to live with that constraint. The committee report states that:

> Just as engineers live in a world of precision measurement, prudent risk, and the understanding that decisions must be based on what is, rather than on what might be, so legislation concerning public works must be equally realistic.

So we have called this the Surface Transportation Efficiency Act. We have not had any discussion of this at all on the floor, but we are not in such

a hurry that we cannot say a word about it. We have said if this is all the money you can spend, then try to get your money's worth.

Surface transportation is at the epicenter, if you like, of public sector disease. We have had in the transportation sector, productivity in the last 15 years that has been growing at 0.2 percent per year. Mr. President, that is a medieval rate. That is the rate at which Western Europe probably grew from the year 1000 to the year 1350, on the cusp of the Renaissance. Such a rate takes 350 years to double.

And why should it not, if you think of it as a free good that can be spent without regard to its consequences, just like we threw our money away on the wild extravagances of the 1980's and became a debtor Nation; went to war and could not pay for it; had to go around the world asking other people to pay for it. We have never done that before.

So we are still talking. What is delaying this enterprise, Mr. President, why we are here asking for amendments is we are still squabbling about how much money we will get, when there is no money left. It has been spent. We are saying at least try to get some good out of what you do spend. Get your money's worth. Think productivity, accountability, efficiency. Think costs and benefits.

We are hoping we can take advantage of a situation that will be with us for generations. If adversity can teach us to spend public moneys well, the adversity will be more than worth it.

This bill institutes the discipline of accountability into the public sector which, like most public sectors, is hugely wasteful and, unlike most others, can be destructive. That is what this bill is all about. We are acting like it is still more of the same: how to spend more money.

Mr. President, I say again that the United States Government, for the present and foreseeable future, cannot and will not embark on the epic enterprises that came with such seeming ease to Roosevelt and Eisenhower. We have spent our money on other things and are now much in debt. There you are.

Mr. President, I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I intend to press this amendment through to a vote. I understand from the Parliamentarian it would take 60 votes. I do not labor under any illusion about its success here today. However, I believe it is a building process.

The first time I made an amendment on prison construction on a budget resolution in the early 1980's, it received 16 votes. ultimately, the amendments on the budget resolution came as high as 95 votes.

I believe that it is important to put Members of this body on record on the underlying principles involved in this matter, because I think the American people will be foursquare in favor of this kind of an amendment.

The American people suffer from inadequate roads, bridges, and mass transit, and the American people pay taxes for that purpose. Those taxes are placed in a trust fund, and those trust funds are diverted.

When the distinguished Senator from Tennessee says that this amendment will affect the markets, I believe that is inaccurate. The markets understand the manipulations of the budget process, and what the true deficit is, and when the highway and mass transit trust funds are used to offset the deficit. A third-grade arithmetic student can understand that. The passage of this amendment would not affect the markets.

When the distinguished Senator from New Mexico says that this will be the end of the budget deal, I understand the complications that this will be for the budget deal. But I do not believe that it is sound for our Government to have taxes pay for gasoline, for highways, and mass transit, and have it used for another purpose.

When the distinguished Senator from Texas, Senator GRAMM, says this is not going to highways, that is just not accurate on the basic thrust of this amendment: that the funds are to be used for highways, bridges, and mass transit.

When, again, the distinguished Senator from Tennessee says the highways and mass transit, have done well from the appropriations process, I disagree, respectfully. The reason that I disagree is that at the beginning of this fiscal year, $9.6 billion were unexpended from the highway trust fund; $7.2 billion was unexpended from the transit trust fund.

If anybody but the Federal Government were to have a trust fund and not use it for the purpose for which it was intended, it would be a criminal act, fraudulent conversion. My colleague from Pennsylvania, Senator WOFFORD, said that it is highway robbery.

I think when the American people understand what is going on here, that their gas taxes are not used for highways and for bridges, they are going to be very unhappy.

That is the underlying vote which is going to happen here today when Senator SASSER and Senator DOMENICI raise a point of order and I move to waive section 306 of the Budget Act. So I am under no illusion about the outcome of this vote. But I trust to be around here long enough to see this succeed.

I recollect the activities of my late colleague, Senator Heinz, on his repeated efforts to take the Social Security trust fund off budget. One night at about midnight he was tying up the Senate on that issue, and ultimately he succeeded.

I think ultimately there will be success to take the highway and mass transit trust fund off budget. I do know that the highway builders and the mass transit exponents around the country will be citing this vote on the underlying issues and the underlying equities.

The hour is now 6 o'clock, and I am not going to belabor the discussion any longer. I will await what I know is a pending objection from the distinguished Senator from Tennessee.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Tennessee.

Mr. SASSER. Mr. President, the pending amendment deals with a matter within the jurisdiction of the Committee on the Budget, and this bill has not been reported by the Budget Committee. As a consequence, a point of order lies against this amendment under section 306 of the Congressional Budget Act.

So, Mr. President, on behalf of myself and Senator DOMENICI, and pursuant to section 306, I raise a point of order against the Specter amendment.

Mr. SPECTER. Mr. President, I move to waive section 306 of the Budget Act for consideration of the underlying amendment.

The PRESIDING OFFICER. The motion is debatable.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, as to debate, I think debate has been had.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the motion of the Senator from Pennsylvania. On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] is necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota [Mr. DURENBERGER] would vote "nay."

The yeas and nays resulted—yeas 29, nays 69, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—29

Boren	Daschle	Levin
Bryan	DeConcini	Lieberman
Coats	Grassley	Lott
Cochran	Harkin	Mack
Cohen	Hollings	Moynihan
Conrad	Jeffords	Nickles
Craig	Kasten	Pressler
D'Amato	Leahy	

Reid	Specter	Symms
Riegle	Stevens	Wofford

NAYS—69

Adams	Fowler	Mikulski
Akaka	Garn	Mitchell
Baucus	Glenn	Murkowski
Bentsen	Gore	Nunn
Biden	Gorton	Packwood
Bingaman	Graham	Pell
Bond	Gramm	Robb
Bradley	Hatch	Rockefeller
Breaux	Hatfield	Roth
Brown	Heflin	Rudman
Bumpers	Helms	Sanford
Burdick	Inouye	Sarbanes
Burns	Johnston	Sasser
Byrd	Kassebaum	Seymour
Chafee	Kennedy	Shelby
Cranston	Kerrey	Simon
Danforth	Kerry	Simpson
Dixon	Kohl	Smith
Dodd	Lautenberg	Thurmond
Dole	Lugar	Wallop
Domenici	McCain	Warner
Exon	McConnell	Wellstone
Ford	Metzenbaum	Wirth

NOT VOTING—2

Durenberger	Pryor

The PRESIDING OFFICER. On this vote the yeas are 29, and nays are 69. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The amendment proposed by the Senator from Pennsylvania would prohibit the outlay and revenue totals of the highway trust fund from inclusion in the surplus or deficit totals under the Budget Act.

Since the amendment is not offered to a bill reported by the Budget Committee, it violates section 306 of the Budget Act. The point of order then is well taken. The amendment falls.

Mr. SYMMS. Mr. President, I just want our colleagues to know the majority leader has advised me it is his intention to push ahead with this bill. If Senators have amendments, we ask they please bring them to the floor. We will be moving ahead.

We have Senator DOMENICI prepared to offer a couple of amendments, and then the two Washington Senators are going to offer an amendment.

Mr. ADAMS. We are prepared to follow Senator DOMENICI.

The PRESIDING OFFICER. There is an amendment pending. It will take unanimous consent to set it aside.

Mr. SYMMS. Mr. President, I ask unanimous consent to temporarily lay the Byrd amendment aside.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

The Senator from Virginia.

Mr. WARNER. Mr. President, first, I thank my distinguished colleague.

Mr. President, the Senate has heard extensive discussion of the apportionment formula provided by S. 1204.

As I have stated, I offer the Senate an alternative proposal which has a growing bipartisan coalition and my amendment is known as the Federal-aid surface transportation bill, or FAST.

The fundamental problem is inequity. The committee's bill perpetuates an inequitable allocation of Federal highway funds between the 50 States and the District of Columbia. The supporters of FAST do not expect, nor request, a 100-percent return; but we do seek an apportionment which is equitable.

A second major problem is flexibility—flexibility is the power given to the States as to how their allocation is applied to their own priorities.

My amendment, embodies three principles as alternatives to sections of the committee bill.

First, my amendment retains a Federal partnership that has been the hallmark of national transportation policy since the outset of the Interstate Highway System in 1956.

And it does so by recognizing that our future national transportation system must link States with modern, well maintained corridors moving interstate commerce and people.

Second, it gives the States maximum flexibility to deal with the particular needs that a State may have; and

Third, in dividing up the money among the several States it follows what we believe should be the cardinal principle in the postinterstate era: Put the money where the cars are. It offers a solution that is tied to the problem that many of our States face—urban and suburban congestion—gridlock.

This amendment does say that with the completion of the Interstate system, the disparity between donor and donee does not have to be as great. This amendment is simply founded on the principles of fairness and equity.

The FAST amendment is simple and straightforward. It is a two-part program consisting of a national highway and bridge program, and an urban and rural highway and bridge program equally divided 50–50 in terms of funding.

The amendment calls for the development of a national transportation system and earmarks half of the money going to any State for use on that system. The States, working with the Federal Highway Administration, would develop the actual system over the months to come. This can be new roads or, more likely, the designation of existing roads—roads which must be maintained to high standards.

There is a continuing need to provide for uniformity and connectivity to all parts of the nation for interstate commerce and national defense, linking major population centers.

Importantly, when it comes to defining and meeting a transportation need in a corridor on the national system, maximum flexibility would be given to the State to meet that need in the most reasonable way.

The National Highway and Bridge System would provide that the Interstate System would be the cornerstone of the expanded system.

States would have the flexibility to designate other roads and bridges to be a part of the national highway system and the U.S. Department of Transportation would certify the designations made, not by the Federal government, but the States. That's flexibility.

That same type of flexibility exists in the other programs under FAST. The Rural and Urban Highway and Bridge System would receive the other half of the funds. These funds can be used on any project except the most local roads at the discretion of the State.

To provide even greater flexibility, up to 20 percent of the funds in either of the two categories can be transferred to the other program to meet a State's needs.

The amendment provides for an 85 percent match from the Federal government for both programs, making an important exception for the construction of high-occupany vehicle [HOV] lanes to help meet our clean air obligations. HOV lane funding would be at a 90 percent match.

This amendment departs from the Federal-aid surface transportation bill as introduced in one respect. The amendment provides for a new discretionary bridge program. It is intended to provide a source of funds to States for the replacement or rehabilitation of high cost bridges. Specifically, high cost bridges are defined as those costing over $20 million or more than 10 percent of a State's annual apportionment.

Mr. President, this amendment also provides three guarantees to all States. They are:

First, there is a hold harmless provision based on 1991 apportionments. That means that no State will receive less the apportionment it received in fiscal year 1991.

Second, there is a protection of one half of 1 percent which guarantees each State a minimum of one half or 1 percent of the total apportionments.

Third, there is a 90-percent minimum allocation.

I would like to emphasize that the other programs provided in S. 1204 would not be altered. My amendment does not change the Congestion Mitigation and Air Quality Program, it does not change the Interstate Completion and Substitution Program or other programs.

Mr. President, I ask that unanimous consent that the amendment be printed in the RECORD in full and that a letter from the General Accounting Office be printed following my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GENERAL ACCOUNTING OFFICE,
Washington, DC, June 12, 1991.

Hon. JOHN W. WARNER,
U.S. Senate.

DEAR SENATOR WARNER: Your office requested that we examine the apportionment formula described in section 121 of S. 1121 for consistency with standing GAO recommendations about the federal aid highway apportionment formulas. After reviewing the relevant provisions of the bill, we conclude that the proposed formula is one of several consistent with our previous recommendations. Our recommendations appeared in a 1986 report, Highway Funding: Federal Distribution Formulas Should be Changed (GAO/RCED-86-114). That report identified three factors that affected a state's cost of preserving the existing highway network: (1) the extent or size of its highway system, (2) how much its highways are used, and (3) the cost of inputs (labor and materials, etc.) needed for preservation. Allocating funds based on these criteria is consistent with a goal of allocating federal aid in accordance with the cost of preserving the existing highway network. However, other goals, such as improving air quality or reconciling the sometimes competing objectives of mass transit and highway programs, were not reflected in our 1986 report.[1]

Our report made the following recommendations for reflecting highway needs:

That highway lane miles be used in place of land area as an indicator of highway system size.

That vehicle miles traveled (VMT) or motor fuel consumption be used in place of urban and rural population as indicators of highway use.

If population is used as a proxy for highway use, that annual estimates be used.

That postal route miles not be used to apportion funds.

Because most highway deterioration is the direct result of highway use, that vehicle miles traveled or motor fuel consumption receive greater weight than lane miles.

At the time of our review, no national index of input costs was available to include in an apportionment formula. Therefore, the 1986 report made no recommendation for an input cost factor. We are currently determining if information for an input cost factor is now available or could be developed.

The apportionment formula in S. 1121 generally conforms to our recommendations. It uses 1/9 rural lane miles, 2/9 urban lane miles, 1/9 rural VMT, 2/9 urban VMT, and 3/9 diesel fuel. Thus two-thirds of the funding is allocated based on the two highway use factors (vehicle miles traveled and diesel fuel consumption),[2] and one third on system size (lane miles). The greater weight placed on highway use factors is consistent with studies we examined in our 1986 report, showing that most highway deterioration is the result of use. GAO has not analyzed and has made no recommendations on the weighting that should be given urban and rural lane miles or urban and rural vehicle miles traveled.

In view of recent legislation that has addressed the goal of clean air, consideration may be given to using vehicle miles traveled and an annually updated population factor instead of diesel fuel consumption. In briefings with your staff, we have also indicated that a formula based on lane miles, vehicle miles traveled, and general population would be consistent with our recommendations.

S. 1121 contains other provisions designed to provide minimum funding guarantees. These include guaranteeing (1) that each state receives at least 0.5 percent of available funding (consistent with current law) and (2) that each state receives at least 90 percent of its payment into the highway trust fund. We have not analyzed these provisions.

Finally, we note that the proposed formula in S. 1121 would result in significant shifts in state funding allocations. We suggested in 1986 that the Congress may wish to provide for a transition period during which changes in state funding would be gradually introduced.

Should you have any questions, please call me at (202) 275-1655 or Jerry Fastrup at (202) 275-6169.

Sincerely yours,

LINDA G. MORRA,
Director, Human Services Policy and Management Issues.

PROPOSED WARNER AMENDMENT

Beginning on page 12, strike section 105 of the bill and insert the following new section:

SEC. 105. UNOBLIGATED BALANCES.

Unobligated balances of funds apportioned or allocated to a State under title 23, United States Code, before October 1, 1991, shall be available for obligation in that State under the law, regulations, policies and procedures relating to the obligation and expenditure of those funds in effect on September 30, 1991, except that—

(1) unobligated balances of primary and Interstate 4R funds may be transferred to the National Highway and Bridge System;

(2) other unobligated balances may be transferred to the Urban and Rural Highway and Bridge Program;

(3) transferred funds are subject to the law, regulations, policies and procedures relating to the category to which transferred;

(4) transfers will be allowed on a one time per year basis; and

(5) this section does not apply to unobligated balances of interstate construction or interstate substitution funds.

Beginning on page 12, strike section 106 of the bill, and insert the following new sections:

SEC. 106. NATIONAL HIGHWAY AND BRIDGE SYSTEM.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following new section:

"SEC. 160. NATIONAL HIGHWAY AND BRIDGE SYSTEM.

"(a) FINDINGS.—The Congress hereby finds and declares the following:

"(1) National resources should be focused upon the important goals of preserving the Nation's investment in its interstate systems and insuring that these systems continue to support actively interstate commerce, national defense, and linkage of major urban areas.

"(2) Broad national defense, economic, safety, and international policy goals are advanced by efficient transportation system which ensure free movement of people, goods, and information.

"(3) National transportation investments should increasingly encourage domestic and international commerce and trade.

"(4) Based on congressionally established national transportation policy and objectives, a new Federal high priority highway network, a national highway and bridge system should be designated from the most vital elements of the current network.

"(b) ESTABLISHMENT.—(1) The Secretary shall establish the National Highway and Bridge System—

"(A) to provide an interconnected system of principal arterial routes which will serve major population centers, ports, airports and international border crossings;

"(B) to meet national defense requirements; and

"(C) to serve interstate and interregional travel.

The National Highway and Bridge System shall consist of all designated Interstate highways on the date of the establishment of the program, an appropriate portion of the rural and urban principal arterial routes, including toll facilities, and national defense highways.

"(2) In addition other routes which meet the following criteria shall be eligible for inclusion:

"(A) Nationally significant truck routes.

"(B) Routes that provide nationally significant commodities with access to markets.

"(C) Access points to significant national parks, international border crossings, ports and airports, and major regions in the States.

"(3) Facilities that will provide logical connection between major population centers and the national highway and bridge system.

"(4) Major urban corridors.

"(c) DESIGNATION.—Each State, in consultation with regional and local officials, shall designate the national highway and bridge system, with the approval of the Secretary. The National Highway and Bridge System shall be based on a functional reclassification of roads and streets in each State. The system should be designated by September 30, 1992, and shall be designated by not later than September 30, 1993, in accordance with guidelines issued by the Secretary. Such guidelines shall provide for an equitable allocation of mileage among the States. For fiscal year 1992 and, if necessary, fiscal year 1993, States may use National Highway and Bridge Program funds for the purpose of funding the preliminary National Highway and Bridge System designated by the State and approved by the Secretary as of September 30, 1991.

"(d) REVIEW.—The Secretary shall establish criteria for reviewing projects to be funded as part of the National Highway and Bridge System. The criteria shall define eligible projects to include rehabilitation, resurfacing, restoration, capacity, expansion, operational improvement, safety, and new highway construction. The criteria shall ensure, as a first priority for the use of available funds, the adequate preservation and protection of investments made in the Interstate highways in each State, and the provision of suitable traveling quality by the Interstate highways. The criteria shall permit funding in urbanized areas to be used to improve highway and transit systems, in any case where there is a showing that the improvement will provide an increase in the level of service within the corridor of the National Highway and Bridge System. The criteria shall also permit the use of such funds for projects for access to ports, airports, international border crossings and other major travel destinations.

---

[1] For a discussion of these issues, see our testimony: Transportation Infrastructure, Department of Transportation Highway and Mass Transit Program Reauthorization Proposals (GAO/T-RCED-91-26, Apr. 18, 1991).

[2] The correlation between total motor fuel consumption and diesel fuel consumption is 0.97. Thus, diesel fuel serves as an indicator of highway system use.

"(e) FEDERAL SHARE.—Notwithstanding any other provision of this title, the Federal share payable for a project under this section for the construction of high occupancy vehicle lanes (as described in section 102(d) of this title) shall not exceed 90 percent of the cost of the project.

"(f) DISCHARGE OF RESPONSIBILITIES.—(1) Upon the request of any State, the Secretary may discharge responsibilites under this title relating to any National Highway and Bridge System project that—

"(A) meets the categorical exclusion criteria (as defined in section 771 of title 23, Code of Federal Regulations, as in effect on the date of the enactment of the Surface Transportation and Efficiency Act of 1991); and

"(B) has an estimated cost of construction of less than $5,000,000.

by accepting a certification by the State transportation or highway department that any such project will be developed, let to contract and constructed in the same manner as other National Highway and Bridge System project.

"(2) Upon the request of any State, the Secretary may discharge responsibilities under this title relating to any National Highway and Bridge System that—

"(A) meets the categorical exclusion criteria (as defined in in section 771 of title 23, Code of Federal Regulations);

"(B) has an estimated cost of construction of $5,000,000 or more; and

"(C) is selected in accordance with criteria established by the Secretary,

by accepting a certification by the State transportation or highway department that any such project will be developed, let to contract and constructed in the same manner as other National Highway and Bridge System projects.

"(g) PROCEDURES AFTER FISCAL YEAR 1995.—Beginning with fiscal year 1996, the Secretary shall discharge responsibilities for the National Highway and Bridge System projects described in subsection (c)(1) of this section by the certification process described in this section. The Secretary shall, beginning with fiscal year 1996, rescind project approval if a satisfactory certification is not presented by the State.".

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) NATIONAL HIGHWAY AND BRIDGE PROGRAM.—

"(A) APPORTIONMENT FORMULA.—For the National Highway and Bridge Program—

"(i) ⅓ in the ratio which the rural lane miles in each State bears to those of all States;

"(ii) ⅓ in the ratio which rural vehicle miles traveled in each State bears to those of all States;

"(iii) ⅔ in the ratio which the urban lane miles in each State bears to those of all States;

"(iv) ⅔ in the ratio which the urban vehicle miles traveled in each State bears to those of all States; and

"(v) ⅔ in the ratio which diesel fuel consumed in each State bears to that consumed in all States.

"(B) MINIMUM APPORTIONMENT.—No State shall receive less than ½ of 1 percent of each year's apportionment.

"(C) TRANSFER TO URBAN AND RURAL HIGHWAY AND BRIDGE PROGRAM.—A State may transfer up to 20 percent of its annual National Highway and Bridge System program apportionment to the urban and rural highway and bridge program of the State if the Governor of the State and the Secretary agree that adequate Interstate System conditions exist.";

(2) by striking "upon the Federal-aid systems" and inserting "upon the National Highway and Bridge System, the Urban and Rural Highway and Bridge Program, and the Congestion Mitigation and Air Quality Improvement Program";

(3) by striking "paragraphs (4) and (5)" and inserting "subparagraph (5)(A)"; and

(4) by striking "and sections 118(c) and 307(d)" and inserting "and section 307".

SEC. 106A. URBAN AND RURAL HIGHWAY BRIDGE PROGRAM.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following new section:

"SEC. 161. URBAN AND RURAL HIGHWAY AND BRIDGE PROGRAM.

"(a) ESTABLISHMENT.—The Secretary shall establish an urban and rural highway and bridge program to provide a category of funds that minimizes Federal requirements, and to provide flexibility in the use of available funds for either highway or transit projects. The urban and rural highway and bridge program shall consist of all public highways (including bridges) functionally classified as arterials, urban collectors, and rural collectors (other than those designated as part National Highway and Bridge System), and shall also include bridges on any public road. Each State, in cooperation with regional and local agencies of the State, shall establish guidelines for implementing the program under this section. The guidelines shall—

"(1) include criteria for setting priorities and encouraging regional intermodal solutions, where appropriate;

"(2) ensure that administrative costs are minimized through simplification of processes and application of controls that ensure accountability for funds and projects;

"(3) ensure that each agency has flexibility to use funds for solutions to transportation problems that bring about a most efficient increase in mobility and best address regional and local land use, air quality, and economic development issues.

"(b) ELIGIBLE HIGHWAYS.—Highway projects may be funded on public roads (except any road on the National Highway and Bridge System, and road functionally classified as local, or any road functionally classified as rural minor collector). Part of a State's annual urban and rural highway and bridge program apportionment may be extended for highway safety improvements, bridge replacement or rehabilitation, or eliminating rail-highway crossing hazards on public roads functionally classified as local or as rural minor collector.

"(c) ELIGIBLE PROJECTS.—Eligible projects under this section shall include construction, operational improvements, highway safety improvements, highway research and development, transportation planning, capital transit projects (such as the construction, reconstruction, and improvement of fixed rail facilities, including purchase of rolling stock for fixed rail), the purchase of buses and support facilities, capital projects to improve access and coordination between intercity and rural bus service, technology transfer projects, startup costs for traffic management and control projects, bicycle and pedestrian projects, projects to develop and improve scenic byways, projects to enhance rural and urban accessibility and mobility, the acquisition of outdoor advertising signs and the sites, removal or screening of junkyards, carpool projects, fringe and corridor parking projects, the construction of exclusive or preferential high occupancy vehicle lanes, landscaping, scenic enhancement and rest area projects, and projects that create, conserve or enhance wetlands.

"(d) REQUIREMENTS.—

"(1) COMPLIANCE WITH STATE REQUIREMENTS.—Projects under this section must be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards and construction standards.

"(2) COMPLIANCE WITH FEDERAL REQUIREMENTS.—

"(A) IN GENERAL.—Each State with a project under this section shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Single Audit Act of 1984 (31 U.S.C. 7501 through 7507), the Civil Rights Act of 1964, the Clean Air Act (42 U.S.C. 7401 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.), the applicable requirements of this title and other applicable Federal laws, regulations, and Executive orders.

"(B) DELEGATIONS.—In lieu of applying the Federal environmental review procedures otherwise applicable under the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.) the Secretary may, under regulations, provide for the approval of projects by recipients of assistance under this section. Such recipients, pursuant to the requirements of this paragraph, may assume all of the responsibilities for environmental review, decision making, and action described in the National Environmental Policy Act, and other provisions of law that would apply to the Secretary if the projects were undertaken as Federal projects. The Secretary shall issue regulations to carry out this paragraph only after consultation with the Council on Environmental Quality.

"(C) CERTIFICATION.—Each State or other recipient assuming responsibilities on the part of the Secretary pursuant to subparagraph (B) shall submit an annual certification under the regulations authorized by subparagraph (B). The certification shall—

"(i) be in a form acceptable to the Secretary,

"(ii) be executed by the chief executive officer or other officer of the recipient of assistance under this section qualified under the regulations authorized by subparagraph (B),

"(iii) specify that the recipient of assistance under this section will fully carry out its responsibilities as described under the regulations authorized by subparagraph (B),

"(iv) specify that the certifying officer—

"(I) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and each provision of law specified in regulations issued by the Secretary (to the extent that the provisions of such Act, or other provisions of law apply under the regulations authorized by subparagraph (A) or (B)); and

"(II) is authorized and consents on behalf of the recipient of assistance under this section and the certifying officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the certifying officer's responsibilities; and

"(v) agree that the Secretary's approval of any certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of laws the regulations of the Secretary specify insofar as the responsibilities relate to the approval of projects by recipients under this section.

"(3) BRIDGE INSPECTION AND INVENTORY SYSTEM.—Each State that conducts a project under this section must have an ongoing bridge inspection and inventory system.

"(4) CONSULTATION.—In any case where a tribe has jurisdiction or is affected by a project under this section, consultation with local officials and Indian tribal officials shall be required.

"(5) DISTRIBUTION OF FUNDS.—In cooperation with local units of government each State shall develop a method to distribute apportionments within the State under this section fairly and equitably to rural areas, urban areas and urbanized areas with a population greater than 250,000.

"(6) COMPLIANCE.—If the Secretary determines that a State or local government has failed to comply substantially with provisions of this section, the Secretary shall notify the State that, if the State or local government fails to take corrective action within 120 days after the receipt of the notification, the Secretary may withhold payments under this section until the Secretary is satisfied that the appropriate corrective action has been taken.

(e) OBLIGATION OF FUNDS AND METHOD OF PAYMENT.—

"(i) OBLIGATION OF FUNDS.—The Governor of each State shall certify prior to the first day of each fiscal year that the State will meet all the requirements of subsection (e). The Governor shall notify the Secretary of the amount of obligations expected to be incurred for urban and rural highway and bridge program projects. The State may subsequently request adjustment to the obligation amounts during the fiscal year. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the urban and rural highway and bridge funds expected to be obligated by the State in that fiscal year.

"(2) METHODS OF PAYMENT.—The Secretary shall make payments to a State (or other recipient) for costs incurred with respect to a program conducted pursuant to this section. Such payments shall not exceed the Federal share of costs incurred as of the date the State requests payment.

"(f) REVIEW AND REPORT.—The Secretary may conduct reviews of State procedures and projects. The States shall report annually to the Secretary in accordance with guidelines established by the Secretary on the use of funds administered under this section.".

(b) APPORTIONMENT.—Section 104(b) of title 23, United States Code, is amended by inserting the following paragraph in an appropriate place:

"(3) URBAN AND RURAL HIGHWAY AND BRIDGE PROGRAM.—

"(A) APPORTIONMENT FORMULA.—The funds authorized to be appropriated for the urban and rural highway and bridge program shall be apportioned in the ratio of attributable tax payments to the highway account of the Highway Trust Fund, attributable to the highway users of each State. No State shall recieve less than ½ of 1 percent of each years apportionment.

"(B) TRANSFER TO NATIONAL HIGHWAY AND BRIDGE PROGRAM.—A State may transfer up to 20 percent of its annual urban and rural highway and bridge program apportionment to the national highway and bridge program of the State.".

At the appropriate place in the bill, insert the following new section:

SEC. . FEDERAL SHARE PAYABLE.

Section 120(a) of title 23, United States Code, is amended to read as follows:

"(a) NATIONAL HIGHWAY AND BRIDGE PROGRAM AND URBAN AND RURAL HIGHWAY BRIDGE PROGRAM PROJECTS.—(1) Except as provided in paragraph (2) and in section 129 the Federal share payable on account of any national highway and bridge and urban or rural highway and bridge program project—

"(A) shall not exceed 85 pecent of the cost of the project (except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved), exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area of all lands in the State, the Federal share may be increased by a percentage of the remaining costs equal to the percentage that the area of such lands in the State, is of its total area); or

"(B) shall not exceed 85 percent of the costs of the project (except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share may be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in the State is of its total area, except that the Federal share payable on any project in a State under subparagraph (A) or (B) shall not exceed 90 percent of the cost of the project.

"(2) In any case where a State elects to have the Federal share provided pursuant to paragraph (1)(B), the Governor of the State must enter into an agreement with the Secretary (for a period of not less than 1 year). As part of the agreement the State shall agree to use such funds solely for highway construction purposes (other than paying the State share of the projects approved under this title) during the period covered by the agreement the difference between amount of the State share of such State (as provided in paragraph (1)(B) and an amount determined pursuant to paragraph (1)(A) that represents the amount that such State would have received had the State elected pursuant to paragraph (1)(A) to pay the share under such subparagraph.".

Beginning on page 28, strike section 108 and insert the following new section:

SEC. 108. DISCRETIONARY BRIDGE PROGRAM.

Section 144 of title 23, United States Code, is amended to read as follows:

"SEC. 144. DISCRETIONARY BRIDGE PROGRAM.

"(a) PURPOSE.—Congress finds and declares it to be in the vital interest of the Nation that a discretionary bridge replacement and rehabilitation program be established to enable States and Federal agencies to replace and rehabilitate high cost highway bridges over waterways, other topographical barriers, other highways, or railroads when the State or Federal agencies and the Secretary find—

"(1) that a bridge is important;

"(2) that the bridge is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence;

"(3) that the bridge poses a safety hazard to highway users;

"(4) that the replacement or rehabilitation of the bridge would minimize disruptions, delays, and costs to users; or

"(5) that the replacement or rehabilitation of the bridge would provide more efficient routes for emergency services.

"(b) INVENTORY; ASSESSMENT; IMPROVEMENT CATEGORY; COST.—The Secretary, in consultation with the States, shall—

"(1) inventory all highway bridges on public roads that are bridges over waterways, other topographical barriers, other highways, and railroads;

"(2) assess each bridge from the standpoint of safety and adequacy to serve traffic; and

"(3) based on the assessment described in paragraph (2), assign each bridge to one of the following improvement categories:

"(A) Replacement.

"(B) Rehabilitation.

"(c) APPROVAL OF FEDERAL PARTICIPATION.—In approving projects under this section, the Secretary shall give consideration to projects that will remove from service bridges most in danger of failure. For bridges on the National Highway and Bridge System, the Secretary may approve Federal participation where a determination as to need, type of improvement and timing have been established through a bridge management system approved by the Secretary. On other public roads the Secretary may approve Federal participation if the agency with jurisdiction over the bridge has a bridge inspection and inventory program that meets the requirements of the National Bridge Inspection Standards (NBIS).

"(d) ELIGIBLE ACTIVITIES.—

"(1) HIGH PRIORITY DEFICIENCIES.—Discretionary Bridge program funds may be used to correct normally ineligible safety related bridge deficiencies that have been identified as high priority by the Secretary. A State shall submit a strategy, work plan and timetable for approval by the Secretary before bridge funds can be used to correct deficiencies. Removal of deficiencies identified as high priority by the Secretary is mandatory for any bridge improvement under the discretionary bridge program.

(2) REPLACEMENT AND REHABILITATION.—Discretionary Bridge program funds may be used for replacement and rehabilitation.

"(e) ALLOCATION.—Amounts available for the discretionary bridge program shall be allocated to States at the discretion of the Secretary. For projects for bridges—

"(1) with a replacement or rehabilitation cost of $20,000,000 or more; or

"(2) with respect to which more than 10 percent of a States annual Federal highway apportionment is expended.

"(f) TOLL BRIDGE ASSESSMENT.—Applications for funding under the Discretionary Bridge program must include a comprehensive assessment of—

"(1) the feasibility of constructing a toll bridge; and

"(2) the option of using combination of funds other than Discretionary Bridge Program funds.

"(g) SELECTION OF PROJECTS.—In selecting projects for the Discretionary Bridge Program the Secretary shall consider—

"(1) the bridge rating factor which includes, but is not limited to serviceability, safety, essentiality for public use, traffic volume, and cost;

"(2) whether the bridge is closed to traffic or has severe load limits;

"(3) the need for equitable nationwide distribution of funds;

"(4) the need to continue or complete projects already begun with discretionary funds; and

"(5) other factors that the Secretary deems appropriate.

"(h) OBLIGATION AND ADMINISTRATION OF PROJECTS.—Discretionary bridge projects on the National Highway and Bridge System shall be obligated and administered under National Highway Program procedures. Bridge projects on public roads not on the National Highway and Bridge System shall be obligated and administered under Na-

tional Highway Program procedures. Bridge projects on public roads not on the National Highway and Bridge system shall be obligated and administered under urban and rural highway and bridge program procedures.

"(i) THE GENERAL BRIDGE ACT OF 1946.—Notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) shall apply to bridges authorized to be replaced, in whole or in part, by this section, except that subsection (b) of section 502 of the General Bridge Act of 1946 and section 9 of the Act of March 3, 1899 (30 Stat. 1151, chapter 425) shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title, if the bridge is over waters—

"(1) that are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce; and

"(2) that are—

"(A) not tidal waters; or

"(B) if tidal waters, are used only by recreational boating, fishing, and other small vessels less than 21 feet in length.

"(j) REHABILITATE DEFINED.—As used in this section the term 'rehabilitate' in any of its forms means major work necessary to restore the structural integrity of a bridge as well as work necessary to correct a major safety defect.

"(k) FEDERAL SHARE PAYABLE.—The Federal share payable on account of a project under this section shall not exceed 85 percent of the cost of the project.".

On page 4, strike lines 16 through 22 and insert the following new paragraph;

(1) NATIONAL HIGHWAY AND BRIDGE PROGRAM.—For the National Highway and Bridge Program $6,000,000,000 for fiscal year 1992, $6,250,000,000 for fiscal year 1993, $6,650,000,000 for fiscal year 1994, $7,365,000,000 for fiscal year 1995 and $9,060,000,000 for fiscal year 1996.

On page 5, strike lines 3 through 8 and insert the following new paragraphs:

(3) URBAN AND RURAL HIGHWAY AND BRIDGE PROGRAM.—For the Urban and Rural Highway and Bridge Program $6,000,000,000 for fiscal year 1992, $6,250,000,000 for fiscal year 1993, $6,650,000,000 for fiscal year 1994, $7,365,000,000 for fiscal year 1995 and $9,060,000,000 for fiscal year 1996.

(4) DISCRETIONARY BRIDGE PROGRAM.—For the Discretionary Bridge program $230,000,000 for fiscal year 1992, $280,000,000 for fiscal year 1993, $330,000,000 for fiscal year 1994, $380,000,000 for fiscal year 1995, and $440,000,000 for fiscal year 1996.

On page 5, line 17, strike "(5)" and insert "(6)".

On page 6, line 1, strike "(6)" and insert "(7)".

On page 6, line 9, strike "(7)"; and insert "(8)".

On page 6, line 19, strike "(8)"; and insert "(9)".

On page 6, line 23, strike "(9)"; and insert "(10)".

On page 7, line 4, strike "(10)"; and insert "(11)".

On page 7, line 12, strike "(11)"; and insert "(12)".

On page 7, line 18, strike "(12)"; and insert "(13)".

On page 8, line 10, strike "(13)"; and insert "(14)".

On page 12, beginning on line 19, strike "Surface Transportation Program" and all that follows through the period on line 20 and insert "National Highway and Bridge Program or for the Urban and Rural Highway and Bridge Program as if the funds had been apportioned for the programs.".

Beginning on page 30, strike section 109 and insert the following new section:

SEC. 109. MAINTENANCE.

Section 116 of title 23, United States Code is amended to read as follows:

§ 116. Maintenance

"(a) DUTY TO MAINTAIN.—It shall be the duty of the State transportation or highway department to maintain, or cause to be maintained, any project on the National Highway and Bridge System constructed with the aid of Federal funds under this title or under the provisions of prior Acts. Each State shall use sums needed from its National Highway and Bridge Program apportionment to ensure adequate maintenance of the Interstate System. If the Secretary finds that a State is not adequately maintaining the Interstate System, the Secretary will require the State to program amounts from its National Highway and Bridge Program apportionments to bring the Interstate System up to adequate condition and keep it in that condition. The State's obligation to the United States to maintain a project shall cease when it no longer constitutes a part of the National Highway and Bridge system.

"(b) STATE AGREEMENTS WITH LOCAL OFFICIALS.—In any State where the State transportation or highway department is without legal authority to maintain a project within a municipality or within an Indian reservation, the transportation or highway department shall enter into a formal agreement for its maintenance with the appropriate officials of the municipality or Indian tribe.

"(c) WITHHOLDING PROJECT APPROVAL.—If at any time the Secretary shall find that any project on the National Highway and Bridge System constructed under this title, or constructed under the provisions of prior highway Acts, is not being properly maintained, the Secretary shall call that fact to the attention of the State transportation or highway department. If, within 90 days after receipt of the notice, the project has not been put in proper condition of maintenance, the Secretary shall withhold approval of further projects of all types in the State highway district, municipality, county, other political or administrative subdivision of the State, or the entire State in which the project is located, whichever the Secretary deems most appropriate, until the project shall have been put in proper condition of maintenance.".

On page 34, line 21, strike "Surface Transportation Program" and insert "National Highway and Bridge Program".

Beginning on page 34, strike line 23 and all that follows through page 35, line 4.

On page 53, line 10, strike "section 133(c)(2)" and insert "the Urban and Rural Highway Bridge Program".

On page 57, strike lines 14 through 18.

On page 57, line 19, strike "(c)" and insert "(b)".

On page 58, line 3, strike "(d)" and insert "(c)".

On page 71, beginning on line 4, strike "Surface Transportation Program project" and insert "National Highway and Bridge Program project, Urban and Rural Highway Bridge program project,"

On page 74, beginning on line 1, strike "Except as provided" and all that follows through "Transportation Program" on line 3 and insert "Projects".

On page 79, line 10, strike "Surface Transportation Program" and insert "National Highway and Bridge Program".

On page 84, beginning on line 17, strike "Surface Transportation Program" and insert "National Highway and Bridge Program".

On page 96, strike lines 6 through 17.

On page 96, line 22, strike "'metropolitan area'".

On page 97, strike lines 22 and 23.

On page 103, beginning on line 20, strike "Surface Transportation Program" and insert "Urban and Rural Highway and Bridge Program".

On page 104, strike lines 14 and 15 and insert the following new subparagraph:

(A) Subsection (a) is amended by striking "section 117 of this title" and inserting in lieu thereof "for the Urban and Rural Highway and Bridge Program".

On page 105, strike lines 16 through 21 and insert the following new subparagraph:

(A) Subsection (a) is amended—

(1) by striking "located on a Federal-aid system" and inserting in lieu thereof "constructed under this chapter"; and

(2) by striking "in section 117 of this title" and inserting in lieu thereof "for the National Highway and Bridge Program and the Urban and Rural Highway and Bridge Program".

On page 196, line 3, strike "SURFACE TRANSPORTATION PROGRAM" and insert "URBAN AND RURAL HIGHWAY BRIDGE PROGRAM".

On page 106, line 8, strike "section 104(b)(1)" and insert "the Urban and Rural Highway and Bridge Program".

On page 106, line 10, strike "AND PRIMARY" and insert "AND NATIONAL HIGHWAY AND BRIDGE PROGRAM".

On page 110, beginning on line 14, strike "Surface Transportation Program" and insert "National Highway and Bridge Program, Urban and Rural Highway and Bridge Program".

On page 112, beginning on line 19, strike "Federal-aid primary": and insert "National Highway and Bridge".

On page 111, line 7, strike "Surface Transportation Program" and insert "National Highway and Bridge Program".

On page 111, strike lines 11 through 17 and insert the following new paragraph:

(22) Section 217 is amended by striking in each of the 2 places it appears "in accordance with paragraphs (1), (2), and (6) of section 104(b) of this title" and inserting in lieu thereof in each place "for the National Highway and Bridge Program and the Urban and Rural Highway and Bridge Program".

On page 112, lines 9 and 14, strike "Surface Transportation Program" and insert "National Highway and Bridge Program".

On page 112, beginning on line 20, strike "surface Transportation Program" and insert "National Highway and Bridge Program".

On page 122, line 7, strike "or device," the first place it appears.

On page 124, line 2, strike "Surface Transportation Program" and insert "National Highway and Bridge Program".

On page 126, line 3, strike "Surface Transportation Program" and insert "National Highway and Bridge Program".

On page 126, lines 8 and 12, insert an ending quotation mark before the period.

On page 123, line 18, strike "set forth in section 120(a)" and insert "85 percent".

At the appropriate places in the bill, conform the analysis and the section numbers of title 23, United States Code, to the forgoing and following amendments.

At the appropriate place in the bill, insert the following new sections:

SEC. . ELIMINATION OF I-R4 PROGRAM.

(a) IN GENERAL.—Section 104(b)(5) of title 23, United States Code is amended by striking subparagraph (B).

(b) CROSS-REFERENCE.—Notwithstanding any other provision of law, any reference to subparagraph (B) section 104(b)(5) of title 23 of the United States Code shall have no force or effect.

(c) INTERSTATE SYSTEM RESURFACING.—Title 23 of the United States Code is amended by striking section 119.

(d) CROSS-REFERENCES.—Notwithstanding any other provision of law, any reference to section 119 of title 23, United States Code, shall have no force or effect.

SEC. . MINIMUM ALLOCATION.

(a) 90 PERCENT MINIMUM ALLOCATION.—Subsection (a)(3)(A) of section 157 of title 23, United States Code is amended to read as follows:

"(A) GENERAL RULE.—In each fiscal year, on October 1, or as soon as possible thereafter, the Secretary shall allocate among the States amounts sufficient to ensure that the total of apportionments and minimum allocation for each State in each such fiscal year shall not be less than 90 per centum of the percentage of estimated tax payments into the Highway Account of the Highway Trust Fund, attributable to highways users in the State (in the latest year for which such data are available) of total apportionments in each such fiscal year and allocations for the prior year (except allocations for emergency relief, forest highways, Indian reservation roads, parkways and park roads, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title, and Bureau of Motor Carrier Safety Grants authorized by section 404 of the Surface Transportation Assistance Act of 1982).".

(b) HOLD HARMLESS.—Subsection (f) is added to section 157 of title 23, United States Code to read as follows:

"(f) HOLD HARMLESS.—In each fiscal year the Secretary shall allocate among the States amounts sufficient to ensure that each State's total apportionment from the Highway Account of the Highway Trust Fund for the year is not less than that made during the 1991 fiscal year (excluding any interstate construction funds in excess of fiscal year 1992 one-half percent minimum, interstate substitution, and amounts for demonstration or discretionary funding programs or projects.".

(c) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 157 of title 23, United States Code is amended by striking "primary, secondary, interstate, urban, bridge replacement and rehabilitation, hazard eliminations, and rail-highway crossings" and inserting in lieu thereof, "Interstate, National Highway and Bridge Program and Urban and Rural Highway and Bridge Program".

(2) Subsection (d) of said section is amended by striking "section 154(f) or 158(a) of this title or any other provision" and inserting in lieu thereof "a".

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. ADAMS. Has the Senator completed his action?

Mr. DOMENICI. No, I have not. I have not started yet.

AMENDMENT NO. 314

(Purpose: To provide states with the authority to commit up to 1/4 of 1% of highway funds to support on-the-job training programs)

Mr. DOMENICI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 314.

Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

S. 1204, the Surface Transportation Efficiency Act of 1991, is amended by adding the following section in the appropriate place:

SEC. . HIGHWAY CONSTRUCTION TRAINING.

Subsection (b) of section 140 of title 23, United States Code is amended by adding at the end thereof: "Notwithstanding any other provision of law, not to exceed one-fourth of 1 per centum of funds apportioned to a State for the Surface Transportation Program or the Bridge Program, may be available to carry out this subsection upon a request by the State highway department.".

Mr. DOMENICI. Mr. President, this amendment reinstates, if it finally becomes law, a program that would permit any State—just permissive, not mandatory—to use up to one-quarter of 1 percent of the moneys that it gets under this bill and under any bridge construction bill for a minority skill training program. We had this in law heretofore. For a period of time it was removed because we had some problems. It has now been perfected, and the States that are using it—they are many in number—everyone assumes they are doing a good job.

They do not have to do this and they do not have to use one-quarter of 1 percent. But they may. And this is permitting a number of minority workers to get trained in the skills required in the various jobs that pertain to highway and bridge construction.

Mr. President, the amendment that I believe is noncontroversial and should not take a great deal of the Senate's time.

Under the Federal-aid Highway Act, there is a program called the Supportive Services, On-The-Job Training Program. The purpose of this program is to provide skill training to minority groups and women.

In New Mexico, this has been a particularly important program in training unskilled individuals.

Despite the successes of this program in my State, in fiscal year 1989, the program was zeroed out in the Appropriations bill, at the administration's request, because of some abuses that had been identified in two Inspector General reports.

However, these abuses were limited and occurred in only a few States. Consequently, despite the fact that this has been a highly successful program in many States, everyone was to suffer because of the abuses of a few.

Consequently, I offered and had accepted an amendment to the Transportation appropriations bill that provided, at a State's discretion, the ability to use up to one-fourth of 1 percent of a State's interstate, primary, secondary, urban, bridge, hazard elimination, and rail-highway crossings apportionments to carry out skill training.

The authority provided under that bill will expire at the end of this fiscal year.

Therefore, Mr. President, the amendment I am offering simply allows the program to continue in those States that are willing to commit a portion of their Federal-aid highway apportionments for skill training. The amendment is identical to the amendment approved 2 years ago on the appropriations bill, except that it has been updated to properly reference highway categories.

By turning the decision to the States on whether or not to use Federal highway funds for this program, ensures that the kinds of abuses cited in the IG reports will not occur again. This amendment allows those States where this program has been a success to continue this valuable service to unskilled individuals.

I urge the Senate to accept this amendment.

It is my understanding that the majority and the minority have no objection to this amendment.

Mr. BURDICK. That is correct. There is no objection.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 314) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 315

Mr. DOMENICI. Mr. President, I am going to send an amendment to the desk shortly. I want to read the operative language because I believe it explains the amendment.

We are talking in this bill about intelligent vehicle highway systems technology. This amendment that I am going to send to the desk essentially would add the following language: The development of a technology base for intelligent vehicle highway systems

and the establishment of the capability to perform demonstration experiments utilizing existing national laboratory capability where appropriate, and the facilitation of the transfer of transportation technology from the national laboratories to the private sector.

The PRESIDING OFFICER. Once again, the amendment by the Senator from West Virginia will be set aside.

AMENDMENT NO. 315

(Purpose: To add a provision to part C of the bill relating to the Intelligent Vehicle-Highway Systems Program to enable the Secretary to take advantage of the state of the art expertise at the national laboratories)

Mr. DOMENICI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 315.

Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 151, line 10, strike out "and".

On page 151, line 15, strike out the period and insert in lieu thereof a semicolon.

On page 151, between lines 15 and 16, insert the following:

(7) the development of a technology base for Intelligent Vehicle-Highway Systems and the establishment of the capability to perform demonstration experiments, utilizing existing national laboratory capabilities where appropriate; and

(8) the facilitation of the transfer of transportation technology from national laboratories to the private sector.

INTELLIGENT VEHICLE-HIGHWAY SYSTEMS TECHNOLOGY

Mr. DOMENICI. Mr. President, I am very pleased to see that Intelligent Vehicle-Highway Systems [IVHS] technology is part of the integrated transportation strategy we are considering today in the Senate. By including two additional goals of the program, I am offering a simple amendment that I believe further enhances the capability and efficiency of the IVHS provisions of S. 1204.

The first goal encourages the Department of Transportation to utilize existing technologies that have already been developed at our Nation's laboratories. The second goal encourages the sound practice of transferring national laboratory expertise to the private sector.

I would like to take this opportunity to express my support for incorporating IVHS technologies into America's transportation infrastructure, and explain the intent of my amendment.

Since 1956, United States road travel has more than tripled. The miles driven continues to increase at 5 percent per year. In the period from 1970 to 1985, the vehicle population increased by 63 percent. All of this has occurred on an aging highway infrastructure that reaches to the far corners of the Nation.

Projections suggest that these increasing travel trends are likely to continue well into the next century and further congest our roads and highways. Yet, intelligent vehicle-highway systems, otherwise known as "smart highways," offers a solution to increasing the efficiency of our highway system, thereby reducing congestion, without expanding existing highway physical capacity.

My colleague, Senator CHAFEE, has stated, "We cannot build our way out of congestion problems by merely adding more lanes of highways. Before you know it, each new lane is as congested as the old." IVHS technologies will be a key component to relieving traffic congestion, preventing accidents, and conserving fuel and energy.

Today I am offering an amendment to ensure that tax dollars invested in this worthwhile program are spent in the most efficient manner possible, without any unnecessary research duplication.

My amendment simply encourages the Department of Transportation to utilize existing National Laboratory capabilities where appropriate, and to encourage the transfer of IVHS technologies from the Federal labs to the private sector.

As some of my colleagues may be aware, solid, proven IVHS technology has already been extensively developed by the Department of Energy [DOE]. In my role as a member of the Senate Energy and Natural Resources Committee, I am well aware of the resources that DOE has invested in smart highways technology, and I am offering this amendment to ensure that our past investment will earn dividends long into the future.

The transportation sector accounts for 60 percent of the petroleum consumption in the United States and is a major contributor to air pollution. Consequently, the DOE, in carrying out its mission in energy and environmental areas, has a strong interest in transportation issues.

Additionally, DOE has the responsibility for the safe and secure shipping of special cargo—nuclear materials and nuclear weapons—in the United States. As a result, the DOE national laboratories have developed over the past 15 years an extensive transportation technology base including advanced vehicle communications systems, traffic management software, route planning, geographic information systems, and design and testing of intelligent electronics systems.

The DOE has demonstrated competence in performing large-scale system simulations on high performance computers and in working with industry to conduct large development programs. The vertically integrated approach to technology development, as well as their experience in traffic management systems places the DOE national laboratories in a unique position.

These facts, coupled with the extensive combustion research facilities and the materials research and engineering capabilities at the national laboratories, form the basis for a strong multiagency program to improve transportation in the United States.

Our existing taxpayers' investment in the technology base at DOE labs should be utilized to the greatest degree possible to leverage any new funds expended to develop this smart highways program.

I hope my colleagues in the Senate will recognize the practical and economic benefits of both this amendment and smart highways technology.

Mr. President, essentially what we have done here is to say that as the United States of America engages in this new intelligent vehicular transportation on our highways that we should, where we can, avail ourselves of the exceptional talent already in our national laboratories.

If we had not put this in—we have had experience heretofore that they would get excluded. We think they might have a role. If they do, we already have them there and certainly we ought to use them. That is what the amendment does.

I understand the majority and the minority have no objection to the amendment.

Mr. BURDICK. Mr. President, we have no objection.

Mr. SYMMS. There is no objection on this side.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 315) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table. The motion to lay on the table was agreed to.

AMENDMENT NO. 294

Mr. ADAMS. I understand this amendment has been cleared on both sides. I am joined in this by Senator GORTON, the junior Senator from the State of Washington.

This amendment would allow Washington State the ability to construct a vital link in its transportation system that was destroyed in floods that occurred there last fall.

The problems surrounding the sinking of Lacey V. Morrow Bridge on I-90 in Seattle is important to Washington State.

I appreciate very much the managers on both sides agreeing to this amend-

ment. The bridge was very important, and it was a part of a final link in the Interstate System. Those sections of the bridge that sunk were to be dedicated primarily to HOV, bicycle and pedestrian use.

The State needs to replace the bridge immediately, but the Federal emergency relief funding to repair it is contingent on no contractor liability. The contractor liability issue in this situation probably will take years of litigation to settle.

In the meantime, the State needs Federal assistance to go forward to rebuild the HOV interstate bridge. The State will pay its local share under this amendment and agrees to reimburse the Federal Government to the degree of any contractor negligence.

Federal emergency repair funding is the most important use of Federal funds. No community can plan for the type of flooding that occurred in Washington last fall. It is this type of helping hand from the Federal Government that marks the strength in the confederation of all the States.

The amendment on the State ferry system is needed to assist the Washington Department of Transportation to operate and compete in the most efficient manner in its highway function. The amendment is needed to ensure adequate service to some Puget Sound communities that are totally dependent on the ferries for surface transportation to the mainland.

The Washington State ferry system carries more passengers annually than Amtrak and is an integral part of Washington's highway and mass transit systems. This amendment assures that Washington State can spend its Federal funds in the manner that it deems best.

I want to thank the committee for its work and consideration of these important amendments for Washington State.

Mr. GORTON. Mr. President, the senior Senator from Washington has accurately described the amendment. It is very important to us in connection with that disaster and the completion of Interstate 90. I know I speak for both of us when I thank the managers of the bill for their acceptance of the amendment.

I also would like to say that there is a companion amemdment to it which I will seek recognition to offer when this one is dispensed with.

The PRESIDING OFFICER. The Byrd amendment will be set aside temporarily.

AMENDMENT NO. 294, AS MODIFIED

(Purpose: To authorize advance emergency relief funds)

Mr. ADAMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS], for himself and Mr. GORTON, proposes an amendment numbered 293, as modified.

Mr. ADAMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In the appropriate place add the following new section:

"SEC. . EMERGENCY RELIEF ADVANCES.

The Secretary shall advance emergency relief funds to the State of Washington for the replacement of a bridge on the Interstate System damaged by November, 1990 storms notwithstanding the provisions of section 125 of title 23, United States Code. The State of Washington shall repay such advances to the extent that a final court judgment declares that damage to such bridges was a result of human error."

Provided, That this provision shall be subject to the Federal share provisions of section 120, title 23, U.S.C.

Mr. BURDICK. We have no objection to the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. SYMMS. I support the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Washington.

The amendment (No. 294), as modified, was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to table is agreed to.

Mr. GORTON. Mr. President, I ask unanimous consent that the Byrd amendment be temporarily laid aside in order to consider an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 316

(Purpose: To authorize funding flexibility for public ferry systems)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself and Mr. ADAMS, proposes an amendment numbered 316.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 40, line 3, replace the period with a comma and insert "except that, in the case of ferry systems that serve such routes and other routes in an integrated system, such ferry may operate throughout the entire service area of the ferry system."

Mr. GORTON. Mr. President, the original form of this amendment was amendment No. 292 which was cleared with both the majority and the minority. There was an objection to one section of it, a legitimate objection, I felt, on the part of the senior Senator from Oregon. In the short time we had available, we were not able to work out an acceptable accommodation to both sides. Therefore, in this revised amendment that portion of the original amendment which was in question is stricken.

This amendment has to do with fairness, Mr. President, and it is particularly important to transportation in the State of Washington. Our ferry system carried 21 million people last year—almost as much as Amtrak did nationwide. There is at the present time and there is under this bill a certain degree of mass transit assistance for ferries going between two places in the same State. In our system, however, some of the ferries serve both urban and nonurban routes. This simply allows the transfer and the more efficient management of the ferries so ferries which were used part time in nonurban routes can also be eligible for mass transit assistance when they are utilized on an urban route.

Mr. ADAMS. Mr. President, I agree with the statement of the junior Senator from Washington. This is an important amendment. It is part, again, of the total road system of the State of Washington. We urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. SYMMS. I support the amendment.

Mr. MOYNIHAN. There is no objection on this side.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 316) was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to lay on the table is agreed to.

Mr. SYMMS. I ask unanimous consent that the Senator from Alabama [Mr. SHELBY] be added as a cosponsor of the earlier Symms amendment dealing with private property.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. I further ask unanimous consent that Senator SYMMS and Senator CRAIG be added as cosponors to Senator DOMENICI's amendment that just passed dealing with the national laboratories.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, once again, on behalf of indefatigable comanager here, I would like to say the bill is open to amendment. Senators who have amendments are urged to come to the floor. This bill is moving

along rapidly now. We would not want to close out any opportunity. Yet we are under a Presidental injunction to have this matter out of the Senate Chamber by—I will not say Friday, because we have to finish this tomorrow, and we will, and we do not want Senators to lose an opportunity available to them.

Seeing no Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistanct legislative clerk proceeded to call the roll.

Mr. SMITH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH. Mr. President, I seek recognition to speak on behalf of the bill.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. Mr. President, in his recent address, President Bush challenged Congress to a variety of domestic goals, including the enactment of a highway bill within 100 days. We have not quite met that, but I commend Senators MOYNIHAN, BURDICK, SYMMS, and CHAFEE for striving to meet this deadline with their innovative, imaginative, and forward-looking transportation proposal, S. 1204.

Mr. President, S. 1204 cleared the Environment and Public Works Committee by a vote of 15 to 1 on May 22. I am pleased to have played a small part in approving this legislation at the committee level.

The premise behind S. 1204 is quite simple: Now that our existing system of Interstate Highways is complete, the principal aims of highway assistance should be to promote energy efficiency, reduce congestion, and enhance the efficiency of surface transportation. I agree wholeheartedly with this forward-looking approach put forth by the Senator from New York.

In terms of our economy, demographics, technologies, institutions, and family lifestyles, the United States has changed profoundly over the last four decades. These changes have prompted changes in our infrastructure needs as well: Instead of a lack of roads or new highway lanes, we face today the new challenges of crushing traffic congestion, air quality mandates, land scarcity, and dilapidated highways.

The Senator from New York and his colleagues have looked very carefully at these problems and looked into the future. That is something we do not always get the opportunity to do or do not take the opportunity to do.

However, our current Federal surface transportation policies do not reflect these nationwide changes. Instead, they reflect political goals and decisions and institutional arrangements established decades ago—some dating back to the year 1916.

Now we have an opportunity to update our surface transportation policies. S. 1204 reflects the transportation realities of today and the future by giving States the flexibility to balance competing demands on limited transportation resources. I repeat and I think it is a very important aspect of this bill: It gives the States the flexibility that they need.

S. 1204 does away with our old, outdated system of primary and secondary roads and replaces it with a flexible, new surface transportation fund. Under the bill, States can use money in this new fund on any surface transportation projects, including highways, bus systems, and commuter railroads. I support this concept.

As a former member of the House Science, Space, and Technology Committee, I also favor the bill's emphasis on magnetic levitation and intelligent vehicle technology. Both are consistent with our environmental needs, good for economic competitiveness, and positive from an energy conservation standpoint.

As a staunch supporter of energy conservation, I am pleased that S. 1204 avoids basing State funding formulas on vehicle miles traveled. Transportation already accounts for 70 percent of all petroleum use—an amount that equals imports. To use vehicle miles traveled as the basis for highway apportionments would just encourage more driving, and therefore more oil consumption. S. 1204 takes a far more creative approach to funding formulas—one that is consistent with energy conservation and environmental goals and meets the needs of our highways throughout the Nation.

I also want to thank Senators MOYNIHAN and SYMMS for agreeing to incorporate language into S. 1204 that will exempt small cities in rural areas from the comprehensive MPO planning provisions in the bill. Senator SYMMS' amendment takes into account the limited resources of at least three cities in my State, and of many more areas of between 50,000 and 250,000 population. While I was away from the floor at the hour that the debate on this amendment occurred this afternoon, I want to be on record as supporting it. I proposed a very similar amendment during the committee markup of S. 1204.

At that time, the Senator from New York promised me that he would give this matter the utmost consideration, and the Senator from New York kept his word. I appreciate that very much.

I urge my colleagues to support this very innovative, environmentally responsible bill that meets the needs of our highway system.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, if I can speak on behalf, and I am sure I can, of my comanager, Senator SYMMS, we would like to thank Senator SMITH for his thoughtful comments. I only object that he is much too modest about his own role in the development of this legislation, which is a bipartisan measure. It came out of our committee 15 to 1, and it was consistently improved and enhanced by Senator SMITH'S comments and suggestions. The bill is his as much as it is any other Member's, in particular the emphasis on science and technology.

We are dealing with a problem here which we call public sector disease. That is an area of the public sector where moneys come in and are expended with no test of cost effectiveness. As such, there is no urgent need to be competitive with some other system elsewhere. By definition, roads are a monopoly, where the aspects of productivity just do not force themselves into the minds of the managers.

As the Senator from New Hampshire knows, productivity in this field of transportation altogether has been growing, if growing is the term, at the rate of only 0.2 percent in the last 15 years. That is a medieval rate; it takes 350 years to double. Manufacturing of durable goods of the kind you see all over southern New Hampshire has been growing at a rate of 6 percent. I bet last evening with Mr. Allaire, the new CEO of the Xerox Corp., and he said, "Oh, yes, in Xerox we have to keep our productivity of 5 or 6 percent a year or we cannot keep up with the Japanese. And we do." But somehow we do not see this sector of the economy as having the same requirements.

If I can make one demonstrative point. We still collect tolls by hand from people sitting and standing in booths. As the Senator from New Hampshire knows—he mentioned the intelligence vehicle highway system—very simple electronics available to us now can record the fact that the car is using a bridge and have it posted to a bill sent out once a month. Very efficient. Such a system would reduce pollution and waste of fuel that comes when cars have to stop in a long row and wait. The whole notion that we should reward increases in consumption of fuel is just the opposite of what our purposes should be

We mean to pass this bill, and then we mean to follow its progress. We are very much interested in giving the different States, which have different ideas, opportunities to test, to innovate, to adapt, to learn from each other and from their mistakes. There are plenty of mistakes around, in transit no less than highways and rail.

I particularly note that the Senator from New Hampshire did ask that we revise the Metropolitan Planning Orga-

nization provisions to exclude small communities that really do not need them. If they do not need them, we do not want to force anybody to do anything that they do not need to do. Senator SYMMS did offer that amendment. It is exactly what the Senator from New Hampshire had proposed in committee. We said we would take it up on the floor. I am sure that Senator SYMMS would want Senator SMITH to be known as a cosponsor.

Mr. SYMMS. That is correct. I rise to my feet to make sure that Senator SMITH is included as a cosponsor on the Symms amendment on MPO's earlier today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. I thank our valued and learned colleague

Mr. SMITH. I thank the Senator from Idaho and the Senator from New York.

Mr. SYMMS. Mr. President, I would like to join the manager of the bill in thanking our new member of our committee, Senator SMITH, from New Hampshire. He has already become a very valued member of the committee, and we appreciate his input on the committee. He spoke very well in the committee with respect to this entire subject of metropolitan statistical areas and MPO's, and so forth, and we appreciate his input and contribution to the committee.

Mr. President, if no other Senators are going to seek the floor, I will just say again that this bill is winding down. We still have the one major issue to determine, that is the allocation formula that there has been some discussion about. If those Senators who have been engaged in this debate in the back rooms do not have anything to bring in and offer the Senate, I know of no other amendments that are here. So if there are Senators who have amendments, now is a good time to offer them because I believe, once we settle the bonus allocation question that Senator BYRD has offered, then this bill will move rather fast. We have several other amendments that I have on my list that Senators have yet to come forth to offer. Some of those are controversial and will require some debate and I believe record votes. So I hope Senators will bring them to the floor.

Mr. President, I ask unanimous consent that I might speak out of order as though in morning business for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESPONSIBILITY AND THE COLLEGE GRADUATE

Mr. SYMMS. Mr. President, I have the privilege of being on the board of directors of a small liberal arts college in Idaho, the College of Idaho, in Caldwell, ID, which has just recently celebrated its 100th anniversary. This college has an excellent record and reputation and has produced many Rhodes scholars and many students who have gone on to achieve higher education in other places.

At their recent commencement, when I was at home in Idaho during the break, we received an excellent commencement address from Mr. Spencer Eccles, who is the chairman of the First Security Corp., from Salt Lake City. I will ask unanimous consent that his speech to the college commencment and to the young students be printed in the RECORD. I note that he encouraged those young college students to participate in their responsibilities of citizenship and in the preservation of the market economy. I urge all my colleagues to read this speech. It is an excellent speech given to a fine young graduating class at a fine young private institution in my State. I ask unanimous consent that his speech be printed in the RECORD following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RESPONSIBILITY AND THE COLLEGE GRADUATE

(Commencement address presented by Spencer F. Eccles)

Ladies and gentlemen—It is a great privilege to share this important occasion with you—the graduates—along with your families, friends and professors. I sincerely commend each of you for the long years of work that have culminated in the degrees you are receiving today from the College of Idaho. You, as graduates, and we, as members of the community, own a large debt of gratitude to the administration and professors who have provided you with this solid educational opportunity. I am confident that your training at this institution of higher learning will bear fruit for you, for your families and for your communities in the years ahead.

In 1959, I sat with the graduating class at Columbia Graduate School of Business in New York City, listening to the commencement speaker (I think it was C. Douglas Dillion, the Secretary of the Treasury) described the challenges which lay ahead for my generation. Now, after thirty-two years of conducting banking business with many people in all parts of the U.S., I feel, today, as though I have traveled full circle. While the outward appearance of your world in 1991 is vastly different from my world of 1959, there are timeless principles that are directly related to individual happiness and society's well-being. In the next few minutes, let me discuss with you three interrelated responsibilities that you and I, individually—and we as a society, collectively—must assume, particularly in light of the issues we will face during this decade of the '90s and in the years beyond. Those responsibilities are:

First: An appreciation for and the preservation of the Free Enterprise System; second, moral and ethical standards of human behavior; and third, a life-long commitment to education.

In 1776, the founders of our nation drafted documents providing for the political and individual freedom of each citizen. In that same Year—1776—a Scotsman, Adam Smith, the father of economics, published his book, The wealth of Nations, which was the first systematic description of the fundamental principles of a market-oriented or free enterprise economy. The founders of our nation adopted a system of government that declared men are free. But it was Adam Smith who enunciated a system of economic principles whereby free men can realize the fruits of their own toil, and in so doing, seem to be guided as if by an invisible hand to contribute to the overall well-being of society and their fellow men. In the words of Adam Smith, "It is not from benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but their regards to their own interests."

I strongly support the principles of a free enterprise, market-oriented economy. Not only is it the most efficient way to allocate our scarce resources among competing wants, but it is a critical factor in maintaining our individual and political freedoms. I believe that democratic capitalism in its entirety is very much dependent upon a free, growing and vibrant economic environment and an educated and well-informed citizenry.

Last September, I was with my family in Berlin and saw with my own eyes the remarkable events transpiring in eastern Europe that symbolically climaxed in the crumbling of the Berlin Wall. As the physical slabs of cement crashed to the ground, a politically and economically bankrupt system lay exposed to the world. Fifty years of heated philosophical discussions regarding the pros and cons of a cxentrally planned economy were now mute. Not only had the system failed to provide a bare minimun of desired goods and services, but it has virtually destroyed the infrastructure and disastrously polluted the water and the air.

Perhaps the greatest tragedy, however, was the demoralization of human spirit. Free enterprise begins with the individual and his ideas, his faith in the future, and his capacity for work. These creative qualities, which we call the "entrepreneurial spirit," were essentially obliterated under the communist dictatorship.

How can we summarize the essence of such monumental events into simple principles that can have meaning for our individuals lives? Let me suggest three ideas for your consideration:

I. There is no such thing as a "free lunch."—Not even the air we breathe is a free economic good. All production is a combined result of effort and capital. The full costs of that production are ultimately borne by society. If an inequitable economic system allows someone to reap what they have not sown, then you can be assured that others are sowing what they cannot reap.

II. Free-market incentives are far superior to government subsidies.—The highest motivation of a faceless bureaucracy ultimately is to perpetuate its own position and survival. In the end, the nature of subsidies and the attitudes of those who administer them are almost always counterproductive to enlarging the overall standard of living.

III. Innovation and productivity flourish when individual effort is directly related to income.—Incentives and bonuses tied directly to individual and corporate performance work wonders in building economic progress.

So, I say, let's be proud of our free enterprise system! Certainly, there are many areas where government has to take a part, but let's reverse the trend toward such big government and the philosophy of "Let the government do it because Uncle Sam has unlimited funds and, besides he can do it better." You know better than that, because in

essence, faced with the disgrace of our unrelenting budget deficits, the government now has to borrow funds to carry out its programs.

The second area of responsibility is adhering to high moral and ethical standards of individual behavior. I am speaking specifically about integrity and honesty, the quest for excellence and the necessity of caring about and being involved with others.

At First Security Corporation, we have over 5,000 employees. Frequently, I am asked which individual characteristics correlate most closely with achievement and success. You may be surprised that, inevitably at the top of the list, are honesty and integrity. All too often we hear the old cliché, "business is business," expressed as justification for deceptive, dishonest or underhanded business practice. You should clearly understand that such practices are not my kind of business, and I would urge you to make certain that they never become your kind of business.

The newspapers are filled with seemingly endless examples of scandals in business, religion, government and politics. Insider-trading on Wall Street; extravagant, immoral lifestyles wrapped in the cloak of religion; misappropriations of public funds; and influence peddling at the highest levels of government—these all come to mind. Critics suggest that TV's J.R. Ewing of "Dallas" lives as the great American symbol for "business as usual." Despite these numerous seedy or sordid examples, may I reassure you that honesty and integrity have not gone out of style. Employees in the banking industry must adhere to an extremely high standard of personal conduct, and although breaches do occur far too often, any instance of dishonesty, or even attempts to manipulate the truth are the basis for great concern and may be grounds for dismissal.

May I stress—and please carefully note—I don't think there is any conflict between the virtues of a free enterprise market and individual integrity and ethical conduct. It's interesting to note that before Adam Smith wrote The Wealth of Nations, he was a professor of ethics at the University of Glasgow and wrote The Theory of Moral Sentiments, a book describing appropriate moral and ethical standards of human conduct. A belief in free markets in no way absolves an individual from adherence to the highest standards of honesty and integrity.

But what about those people in our society who will inevitably fall between the cracks of a free enterprise system? I strongly believe that individuals and business working in conjunction with appropriate government programs can make a huge difference by voluntarily sharing the bounteous fruits generated by free markets. Vladimir Pozner, a prominent Russian journalist whom you may have seen on American TV, spent his boyhood years in New York City and then returned to America in 1986 after the absence of 38 years. In his book, Parting with Illusions, he describes his initial New York observations and his experience with the forgotten Americans:

"The cops patrolling Washington Square on the lookout for dope peddlers. Kids lining up in the doorways of crack houses in the Village. . . . [People] sleeping on benches and sidewalks in Tompkins Square. Bitterness in the faces of a forgotten America, an America written off by corporate capitalism's ethic.

"Sitting in the lounge and waiting for the early morning express that would whisk me from New York to D.C., I watched as one man, obviously under the influence of wine or drugs, giggled and laughed madly. . . . Finally, . . . he took off his coat, rolled it up, pillowlike, and laid his head on it . . . [and] was instantly alseep . . . [As he] lay there on the bench, . . . another man approached, . . . dressed in what clearly was secondhand clothes. Tall and lanky, he too was drunk or drugged. . . . He sat down next to . . . [the sleeping man] and gave him a tentative shove with one finger. Getting no reaction, he pushed a little harder. Again, nothing. He then gave the coat a tug. And another one. . . . [As the sleeping] man's head slipped down onto the bench . . . [the second individual] picked up the coat, rolled it up even tighter, stuck it under his arm, and, with a sly grin on his face, sidled out of the lounge. The beggar stealing from the poor man.

"There must have been at least fifty people who saw that scene. They watched it out of the corners of their eyes, holding their magazines, morning papers, pocket books in front of their faces. They never said a word. It didn't concern them. Those two men came from a different and dangerous world, a world that, somehow, was not quite America as far as they were concerned."

Well, incidents like this, which are all too familiar to each of us, are not an inherent sickness of the free enterprise system. The usual prescription of this perceived "sickness" is an ever-expanding, tangled web of governmental social welfare programs. The ultimate results of this approach, however, lie with tombstones in Eastern Europe and the USSR. Only you, only I, only we as individuals can solve this problem. If we live with integrity, if families don't fail, if neighborhoods and communities provide a sense of stability, the forgotten Americans will be rediscovered. I believe each of us must develop a social conscience and actively participate with volunteer and church groups and government to improve the quality of life for all people.

The third responsibility before us is a lifelong commitment to education. It is ironic that while the purpose of today's convocation is to celebrate extraordinary educational achievement, the public education system in America is broken and should be rapidly overhauled. In the high-tech world of international competition, the simple truth is, "If Johnny can't read, the U.S. can't compete."

As James Hayes (publisher of Fortune magazine) noted in a speech last month to a Junior Achievement group in Salt Lake City:

"It is not just the 700,000 kids who drop out of high school every year. It is not only the additional 700,000 students who graduate from high school each year so ill-prepared they cannot read the words on their diplomas. Nor is it just the huge number of supposedly educated young people who, after twelve years of school, can't read at a ninth-grade level or who lack the mathematical skills considered the minimum for a seventh grader."

No, it is more than that!

Tens of thousands of American children show up on our college campuses not knowing what the Magna Carta is, what the Reformation was, who wrote the Emancipation Proclamation, or what Brown vs. Board of Education was about.

Former Secretary of Education Terrel Bell, who comes from Utah, said, "The economic well-being of a person, a business or a nation cannot be separated from their educational skills. It's basic economics." While he was Secretary of Education, President Reagan asked him to appoint a blue-ribbon commission to study the U.S. public education system's strengths and weaknesses. The results, entitled A Nation at Risk—The Imperative for Educational Reform In America, sold twelve million copies and clearly analyzed our education problem. Yet, we seem to have made scant progress since the initial excitement of this fine study.

The economic benefits of maximizing the potential of the human brain has been vividly displayed by the Japanese over the past twenty years. Inhabitants of these rocky little islands turned their lack of nonhuman economic resources into an asset by capitalizing on their human resources, and in the process became the world's low-cost, high-quality producer. Perhaps more than any other common denominator, the Japanese economic success rests upon the value they place on education. Education is an investment for and in their children and is viewed as the key to a better life. The Japanese economic miracle fundamentally builds on the principle that investment in education for an individual, a municipality or a nation always pays the highest dividends.

In the recent, controversial book, The Japan That Can Say No, Shintaro Ishihara points out the nearly complete dependence of the U.S. military and nuclear arsenal upon Japanese technology and manufacturing.

"The one-megabyte chip used in computer memory banks has a million circuits on a silicon base one-third the size of the nail on my litter finger. This vital component is made only in Japan. Japanese manufacturers almost completely control the market. The United States has the knowledge but lacks the engineers and technicians to produce these chips. Without an integrated development and manufacturing system, this precious knowledge is wasted."

Micron Technology (headquartered in Boise, Idaho) is however, a good example, where commitment to education and training is altering the Japanese dominance in the semiconductor industry and can make a difference.

Fundamentally, I believe the problem in U.S. education is twofold: One element involves attitudes; the other concerns the system itself.

First, scientific and mathematical skills languish among American students because they require tedious labor that conflicts with our fun-loving, permissive and "get-rich-quick" culture. As expressed by columnist Alston Chase:

"These disciplines are exacting and demand hard work—a notion quite foreign to the view many parents and educators share that learning should be 'fun.' Neither innovation nor money will solve education's basic problems as long as heavy intellectual labor is treated as though it were a symptom of a compulsive psychological disorder."

There has to be a reason why, as The Wall Street Journal reported yesterday,"More than half of U.S. public school high school students still don't take chemistry or advanced algebra before graduation."

Our challenge for future generations is to create a family atmosphere and a support system that place the highest priority on learning and educational excellence. Teachers must both earn and receive the highest positions of respect and honor in our society.

Second, the public education system must be reformed. Schools today are essentially the only institution in our society I can think of that are basically the same as they were a hundred years ago. Public education lacks those vital, market-oriented incentives—such as choice, accountability, decen-

tralization, and performance-based compensation—that are necessary to produce educational excellence.

For example, in President Bush's "America 2000" recently announced education proposal, he calls for parental choice in determining which schools their children will attend. In a scholarly article entitled, "Choice Is a Panacea," John E. Chubb (the Brookings Institution) and Professor Terry M. Moe (Stanford University) provide an in-depth analysis of the critcal necessity for these "market-based control mechanisms" in reforming and improving our educational system.

They point out that nothing in the concept of democracy requires schools be subject to direct control by school boards, superintendents, central offices, departments of education, and other arms of government. They say the state should not be the authority holding schools accountable for student achievement and the quality of school performance. Schools should be held accountable for performance from below—by parents and students who directly experience their services and are free to choose which school they will attend.

It appears well-reasoned that these market-based mechanisms—which include public national assessments, teacher and student accountablilty, choice, parental responsibility, local control, and support for preschool children—are keys to a rejuvenated, resurgent American educational system. But we must go beyond only tinkering to fundamental, far-reaching reforms; otherwise, the leading industries, jobs, products and technologies of tomorrow—the engines of America's future—fall into the hands of those faster, better-educated and tougher-minded. John F. Akers, chairman of IBM Corporation, solidifies the challenge:

"Our democratic structure and economic prosperity depends on a well-educated citizenry. Let's agree on what must be done and work with America's students and their parents, teachers and principals so that each school can, once again, become what it was always meant to be—a building that has four walls with tomorrow inside."

In conclusion, then, let me urge you to contemplete and fulfill the three responsibilites I have discussed. Based upon experiences in my business career, what I have learned as a husband and father, and my deepest personal commitments, I recommend the following course of action to you.

First. Support, sustain and appreciate America's market-oriented free enterprise system. Remember, your vote really does count! Second, live your life and conduct your business with honesty and integrity and with an eye toward a real a social conscience; and third, individually, as parents and as citizens, strive for educational excellence.

Thank you very much for the honor of sharing this special day with all of you graduates, and best of luck in building on your college education for a happy and successful future.

Mr. SYMMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KOHL). Without objection, it is so ordered.

SURFACE TRANSPORTATION EFFICIENCY ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 317

(Purpose: To require erosion control guidelines)

Mr. MOYNIHAN. Mr. President, on behalf of Senator RIEGLE I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection the pending Byrd amendments will be laid aside. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for Mr. RIEGLE, proposes an amendment numbered 317.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Add the following new section in the appropriate place:

SEC. . EROSION CONTROL GUIDELINES.

(a) The Secretary of Transportation shall develop erosion control guidelines for States to follow in carrying out construction projects funded in whole or in part by this Act.

(b) Guidelines developed under subsection (a) shall not preempt any requirement made by or under State law if such requirement is more stringent than the guidelines.

(c) Guidelines developed under subsection (a) shall be consistent with the programs of section 319 of the Clear Water Act and section 6217(a) of the Omnibus Budget Reconciliation Act of 1990.

Mr. MOYNIHAN. Mr. President, this is a simple amendment that would have the Secretary of Transportation develop erosion guidelines for new construction such as might take place in the years ahead in the highway system, and there will be new construction.

And there will be new construction. If there is an engineering need for this, it ought to be met. This is not mandatory. This has to do with enriching our manual of road construction, basically. We have no objection to it.

Mr. SYMMS. Mr. President, I will not object to the amendment. I only want to make a brief comment to say that I think what is in the amendment of the distinguished Senator from Michigan I hope is being done, and I do not think it will be inconsistent with or cause much grief for the highway engineers to do this.

But I call to my colleagues' attention section 121 of the bill wherein this bill, which we made such a major effort to return responsibilities to the States, both the money and how to spend it and program designs and efficiencies where States may be able to design construction standards adopted by the States for projects on principal arterials, et cetera, up to standards, this is an amendment I would like to look at a little more. I say for now, accept it. I want to put that one caveat in.

It strikes this Senator that it is slightly inconsistent with the general theme of the bill, although I think it may be that the Senator from Michigan has a good thought, a good plan, and something we should look at. It does not mandate. It does not require. It is to set some guidelines.

Having said that, I urge the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 317) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, once again seeing no Senator seeking recognition, I repeat the desires of the bill managers that anyone who has amendments bring them to the floor because they might look up and find this legislation is out the door. They have been warned. The record will so show.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, we do not want the evening to come to a close without one last request on the part of the managers. If there are amendments Senators would wish to offer, we are here waiting for them. We are beginning to think perhaps there are none, or none we know of. That may be good news.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. With due respect to my great friend, the distinguished senior Senator from New York State, I know the managers understand, as does the majority leader, that this Senator does have an amendment.

This Senator is agreeing with the managers and the majority leader to accommodate the time of the Senate by limiting debate. This Senator would accept half an hour equally divided, or we will talk as long as we want to, or whatever accommodates my colleagues.

This Senator has a very straightforward amendment. I would like to ac-

commodate my colleagues at whatever convenient moment that accommodates them by offering that amendment.

Mr. MOYNIHAN., Mr. President, I only say, which need not be said, that the Senator from Illinois is exactly right. What I said is maybe there are very few amendments left we do not know of.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I rise in opposition to the amendment of the Senator from Nevada. This issue, billboards, has had a long and complicated history. This section of the Surface Transportation Efficiency Act of 1991 basically does two things: First, it allows States to decide, if they want to remove nonconforming billboards. Second, it allows States to decide how they want to compensate billboard owners when removing nonconforming billboards.

Current law dictates that States must remove nonconforming billboards. Obviously, that hasn't been very successful. A trip down any interstate in America will tell you that. There are still a large number of nonconforming billboards standing.

But, Mr. President, nonconforming does not mean illegal. Therefore, the Federal Government should not dictate they come down. The Federal Government should not require the States to pay more in the way of "just compensation" than the fifth amendment requires. Yet the cash compensation requirement in existing law does just that.

Mr. President, it is the State's zoning that makes a billboard nonconforming, not Federal law. Under this bill, it is the State that will decide if it wants a nonconforming billboard to be removed. The State laws should and will determine how the billboard owner will be compensated. That brings me to the second major aspect included in the highway bill.

S. 1204 merely eliminates the withholding of highway funds from States that choose to remove billboards with amortization. In addition, this bill provides adequate funding for States to provide cash compensation, if they so choose. It is my understanding that several States' constitutions approve of amortization and use it to eliminate other types of nonconforming land uses. Some of the uses include junkyards, trailer parks, grocery stores, dog kennels, auto storage, and trash balers. The amortization periods in these cases ranged from 1 to 7 years. Also, several States are opposed to the concept of amortization and their respective State constitutions articulate that opposition. Opponents to this bill argue that amortization is unconstitutional under the U.S. Constitution. But, the legislative branch of Government is not here to decide the constitutionality of anything. If a constitutional right is being violated by State law, the aggrieved party has a remedy in the courts.

While Congress should probably not waste its time and effort passing laws that are clearly unconstitutional, private citizens do not need a Federal statute to protect a constitutional right. They can protect their own rights through the legal system, because the courts will not allow the States to take a person's property in violation of the fifth amendment.

Mr. President, we should defeat the pending amendment and allow the process proposed by the committee to go forward.

Mr. FORD. Mr. President, I rise in strong opposition to S. 1204, the Surface Transportation Efficiency Act. As presented to the Senate by the Committee on Environment and Public Works, I find it has serious deficiencies which, if not corrected, will impede the efforts of the Commonwealth of Kentucky to meet the transportation needs of its citizens.

According to the Road Information Program, commonly referred to as "TRIP," Kentucky has the 14th largest highway program in the Nation. Yet, of the nearly $1 billion in funds spent in 1990 by the Commonwealth, only 18 percent of those revenues came from the Federal Government's highway trust fund.

So Mr. President, my colleagues can see that the citizens in Kentucky are shouldering almost all of the cost of improving their highways. They are also sending to Washington more gasoline tax money than they get back from the Federal trust fund. We certainly understand that, to build a National Interstate Highway System, some States would have to contribute more than others. But, the interstate is now complete according to the policy statement contained in S. 1204.

We, in Kentucky, had an expectation that the 1991 highway bill would recognize that States like Kentucky should get a fair share of the trust fund revenues. Instead we find that the committee bill not only doesn't do that, it takes even more Federal money away from us. That's right. Instead of at least giving back what we send to Washington, we find the legislation will reduce our apportionment by 10 percent—and that is 10 percent every year for at least the next 5 years or $155.5 million.

I am beginning to believe that Kentucky would be better off if the Federal Government repealed the Federal motor fuels tax and just let the State fund the whole program.

Mr. President, I have studied the allocations contained in S. 1204 and have determined that the principal sponsors of the legislation have done a very able job in representing their own States' interests. Since none of those States are donors, they will be receiving more from Washington than they are sending. That might be supportable if fairness were embodied in the legislation but it is not. In this Senator's judgment, the bill is not even-handed and therefore must be revised.

We have great transportation needs in Kentucky. The Commonwealth wants to participate in the construction of a new interstate which will run from Washington, DC to California. This road, Interstate 66, would traverse Kentucky from East to West. We also would like to finish the Appalachian Corridors Program. Eastern Kentucky has waited 26 years for these vital transportation links to be constructed and they may still be waiting another 26 years from today unless this legislation is changed to include a National Highway System.

My friend from New York might tell me that we can in fact build these roads with the puny funds the legislation would give Kentucky. And maybe that is so. But his bill only provides for a 75 percent Federal share for the construction of these projects while allowing 80 percent funding for the big city projects. Thus, not only are we receiving less Federal money, we are told that projects for rural America are not as deserving as the big city transit or carpool projects.

That is especially difficult for the Commonwealth of Kentucky to accept. We have prefinanced almost $70 million in construction for the Appalachian Corridors Program. At the same time, we see the Federal Government is providing other States with Federal money for their corridors. And this is money which is in addition to other highway trust funds. Look at the record of just the past 5 years. Alabama: $69.8 million; Mississippi: $51 million; New York: $43.4 million; Pennsylvania: $88.9 million; West Virginia: $206 million. What did Kentucky receive? $12 million. The Commonwealth provided nearly six times what the Federal Government has given while our neighbors are raking in Uncle Sam's largesse and not doing any significant prefinancing.

Now along comes S. 1204 and the ARC roads are not put on any National Highway System so the dream of safe roads in the mountains will stay only a dream for my constituents.

The committee bill proposes to invest $5 billion of highway trust fund money for clear air improvements in so-called nonattainment areas. The bill allocates funds based upon population

and the severity of the pollution. In other words, the more people you have and the worse the pollution, the more Federal money you will get. A review of urban areas that will get this money shows that they are the very largest cities in America. Although some smaller cities, including two in Kentucky, will get a little money from this program, it is the big areas which will receive the funds. While I am sure these areas need the money, what troubles me is that the legislation is simply earmarking funds for the big cities to use for nonhighway projects. In fact, the legislation does not even specify what the money will be used for; that decision is being left to the Federal EPA to decide. Who knows what they will come up with?

Up to now I have commented on deficiencies in the legislation. As with any initiative, there are certainly positive as well as negative provisions. Among the good ideas are the completion of the interstate, funding for a bridge program, an intelligent vehicle program and the deletion from the administration's bill of that wrongheaded idea to allow big corporations to have access to develop interstate rest stops.

S. 1204 does provide for a continuation of the university transportation centers. We are blessed with two good programs in Kentucky at the University of Louisville and the University of Kentucky. The immediate past president of the Council of University Transportation Centers is Calvin G. Grayson of the University of Kentucky. He informs me that, as a nation, we devote less than two-tenths of 1 percent of our transportation expenditures to research. The private sector, in contrast, expends as much as 4 percent on research and, in the so-called high technology field, research constitutes as much as 8 percent of total expenditures. The council recommends increasing research modestly to 2 percent of the transportation budget. I urge the bill managers to look seriously at this proposal.

Mr. President, I know the senior Senator from New York and his colleagues on the Environment Committee are sincere in their belief that this legislation is the right course for America to follow to the 21st century. This Senator, unfortunately, does not share their view for the future. Our needs in Kentucky are staggering and they are so very different from those of the big cities like New York or those in New Jersey. Yet, the problems of these urban areas are driving the policy decisions of this legislation. Those priorities just don't make any sense in Kentucky. I would respectfully suggest to my friends who support S. 1204 that it looks like you left the highway out of the highway bill.

On Tuesday, June 5, the senior Senator from California introduced S. 1194, the Federal Mass Transportation Act of 1991. This legislation is the second part of a comprehensive Surface Transportation Assistance Act. The House of Representatives has conveyed jurisdiction over both programs to one committee. But here, two separate bills are necessary because the jurisdiction over highways is in the Environment and Public Works Committee, while transit programs are the responsibility of the Banking Committee.

One of the reasons I believe we are having so much difficulty with S. 1204 is that it attempts to do too much. The legislation not only tries to continue some of the Highway Program, albeit in a new form, but also tries to address serious issues more appropriate, in this Senator's view, for Senator CRANSTON's mass transit legislation.

Let's look at just one example. Under the Urban Mass Transit Act, the Federal Government provides operating assistance to mass transit systems. President Bush has proposed to eliminate this assistance in his amendments to the UMTA statute. The senior Senator from New York is rightly concerned about the impact of this proposal on his cities and transit workers. To resolve this dilemma, the committee bill will now allow highway trust fund money to pay for operating assistance. And the fund will come, not from the mass transit account of the trust fund, but from the highway account.

The leadership on both sides of the Banking Committee have introduced legislation to reauthorize the Mass Transit Program. Included in their proposals is the continuation of Federal funding for operating assistance for transit systems. I would submit, Mr. President, that this is the way to legislate. Keep transit problems in the transit legislation and don't undertake legislative robbery of the highway fund.

Mr. President, the senior Senator from Virginia, a member of the Environment Committee, has introduced an alternative to S. 1204. Senator WARNER's legislation, S. 1124, is a significant improvement over the committee product and should be adopted in lieu of S. 1204.

I expect the Senate will have an extensive and extended debate about the merits of these competing initiatives. This Senator supports the Warner alternative. I regret that I must oppose the committee product but it is too radical for Kentucky and would severely jeopardize the economy of the Commonwealth, our ability to improve our highway system, and the safety of the traveling public. We have taxation with representation in Kentucky and S. 1204 does not represent what we think our gas tax money should be allocated or spent for. Therefore, unless changes are made, I would urge the Senate to reject S. 1204.

Mr. MCCONNELL. Mr. President, today I rise to support reauthorization of the Surface Transportation Act. While I am in support of authorizing a new multiyear highway bill, I am deeply concerned that the Senate is attempting to pass legislation that is inherently unfair to a number of States. For this reason, I have cosponsored Senator WARNER's FAST bill, S. 1121, and commend him for his efforts to see that donor States receive a fair shake in this highway bill.

As one of 13 Republican Senators in 1987 who voted to override President Reagan's veto of the last highway bill, I am well aware of the importance this legislation holds for my State. However, at this time, I am reluctant to support a bill that does not give Kentucky a fair allocation of Federal highway dollars.

Due to Kentucky's status as a donor State, it has lost over $218 million during a 5-year period in which it contributed more money to the trust fund than it received. Senator WARNER's FAST bill, S. 1121, will provide a more equitable distribution of money to donor States similar to Kentucky. Under this proposal, it is estimated that Kentucky, over the life of S. 1121, will receive an average of 96 cents back on each dollar contributed to the highway trust fund.

Mr. President, while I have serious reservations about Senator MOYNIHAN's committee bill, it is imperative that Congress complete its work on a multiyear highway bill before the end of the fiscal year. This year's legislation represents the first major reauthorization of transportation programs since 1956 and will establish overall policy for the next 20 years. With the need to upgrade and maintain our country's aging roads and bridges, as well as the need to establish a transportation policy into the next decade, a new highway bill puts us at an important crossroads in our transportation future.

As we consider this highway bill, there are several issues which need to be addressed. First of all, we must recognize that our aging and congested transportation infrastructure is negatively impacting the economic well being of the Nation. The U.S. Department of Transportation estimates that if our highways are allowed to deteriorate, by 1995 the U.S. economy could potentially miss out on increases of 3.2 percent in GNP, 5.9 percent in disposable income, 2.2 percent in employment and 2.7 percent in manufacturing productivity. As we strive as a country to be more competitive in today's global economy, the Nation cannot afford to let our transportation infrastructure deteriorate to such a level which places us at a distinct disadvantage with our foreign competitors.

Second, we need to be prepared to adequately invest in transportation research. While steps need to be taken to ensure that our road and bridge system is maintained and expanded to meet user demand, it is crucial that money

be provided to research alternate forms of transportation. It is time to research and develop projects that will enhance transportation in both rural and urban areas. In addition, all efforts to further safety programs must be pursued as we continue to make further advances in highway design, safety equipment, and signage.

Finally, it is time that States are given the proper flexibility to meet their own individual transportation needs without being subject to rigid program fund distribution formulas. I have always believed States are in a better position to make decisions concerning their funding priorities for roads, bridges, and mass transit. Greater flexibility in the use of transportation funds will permit investment in the most cost effective solutions to a State's mobility needs.

In conclusion, it is my hope that the Senate can eventually craft a fair highway bill which provides equitable apportionments to both donee and donor States. We have the opportunity to shape transportation policy for the next several years. It is imperative the Senate agree to a highway bill which reflects both future and present transportation needs without sacrificing the present to pay for the future.

I urge my colleagues to pass a bill which accurately reflects the transportation needs of the entire country.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, and Members of the Senate, I have discussed the status of the pending legislation with the distinguished Republican leader, with the managers of the bill, the distinguished Senators from New York and Idaho.

I was present during the statement of the Senator from Illinois expressing his interest in proceeding with his amendment.

Mr. President, I am advised there are approximately a dozen or so amendments with respect to which Senators have expressed an intention to offer them to the bill. It is anticipated by managers and the staff that not all of those will require rollcall votes, and some may not be offered.

We find ourselves in a familiar situation in that we have legislation pending; a number of Senators expressing an intention to offer an amendment and, with the notable and laudable exception of the Senator from Illinois, not being present to offer their amendments and being unwilling at this time to proceed to offer their amendments.

Accordingly, following the consultation which I earlier described, I have concluded the best way to proceed with respect to this bill will be not to have any further rollcall votes this evening for the simple reason we cannot get Senators to offer amendments that would require rollcall votes with the exception of the one amendment to which I referred.

We will seek consent at 10 o'clock tomorrow morning that the Senator from Illinois be recognized to offer his amendment and that the Senate be in a position to proceed to that at 10 in the morning or indeed, in the alternative, to lay the amendment down this evening and be ready to go to it at 10; then to proceed to attempt to dispose of the bill during the day tomorrow.

If we are unable to do so, we will remain in session tomorrow evening for as long as it takes, even if that means late in the evening. So that Senators may be prepared to adjust their schedules, by coincidence, as I was advised last evening by the Senator from Idaho, there is a large Republican function tomorrow evening, with the President scheduled to appear.

It has been our practice and custom over many years to accommodate both parties for such functions which, of course, are scheduled many months in advance at a time when no one can know for sure what the floor situation will be.

I have advised the Republican leader that it is my intention to create a window of 2 hours tomorrow evening, at a time of his choosing, to accommodate that dinner; but then to return following that and to remain in session for as long as it takes. We simply cannot continue to have just a few hours on the bills and stretch out their consideration by the Senate over an indefinite period.

I have attempted diligently to accommodate the schedules and interests of all Senators, recognizing, as I do, how heavy the demands are upon Senators and how burdensome their schedules are. But ultimately, of course, as we all recognize, when those efforts and accommodations conflict with our public responsibility, they must yield.

I have also advised the distinguished Republican leader, and will repeat, that as soon as we complete disposition of this bill, it is my intention to proceed to the comprehensive crime legislation, which I hope will be this week, and that we can start on that important subject.

So, Mr. President, I want to say to my colleagues who have expressed an intention to offer an amendment but have been unwilling to come here to offer it this evening, they are only ensuring the inconvenience of their colleagues to a much greater extent tomorrow, possibly late tomorrow evening.

For all of those offices where the Senator is not present and listening, I ask that his or her staff advise them of this statement so we will not tomorrow morning be deluged with requests to accommodate Senators' schedules tomorrow night. With the exception of the 2 hours to accommodate the Republican dinner, as I earlier stated, there will be no accommodations. No matter how long it takes, we are just going to stay and try to get this job done. That is our public responsibility, and we must meet that responsibility.

I am pleased to yield to the Republican leader.

Mr. DOLE. Mr. President, I do not disagree with the majority leader. It seems to me if there is nobody here to offer amendments—I guess the Senator from Illinois is prepared to offer an amendment, but we cannot proceed any further, unless somebody on this side is prepared to offer an amendment.

I guess the manager on this side would indicate that nobody on this side is prepared to offer an amendment. I would like to complete action before 7 p.m. tomorrow evening. I hope it is a large Republican function, as the majority leader indicated. In any event, I do not know of any other course to follow.

Perhaps, by morning, we can even narrow down further the list of amendments and get some agreement in the morning that these amendments and other amendments will be in order. That might be helpful. Once that were done, we could probably get time agreements.

The Senator from Iowa is prepared to give us a time agreement, I think.

Mr. DIXON. Mr. President, may I say to my friend——

Mr. MITCHELL. Mr. President, do I have the floor?

The PRESIDING OFFICER. Yes.

Mr. DIXON. If the Senator will yield, I thank the Republican leader for his accommodation. I would like to set the trend for tomorrow. I hope, after the number of years I have served here, my reputation is well known for accommodating my colleagues at every opportunity. I would like to accommodate my colleagues again on this question.

This is not an argument between my friend, the Senator from Iowa, and this Senator. It is an argument between our two States about a matter of numbering a highway, regarding which I want the Secretary of Transportation and a committee he determines to settle an argument between two States.

I can do this argument in 20 minutes tomorrow, evenly divided, or 30 minutes evenly divided, or whatever accommodates the Senate. The amendment is so simple. If I read it, I would be willing to let everybody vote. It is on one page, may I say.

I do not want to take up the time of the Senate. It is a matter that two States cannot resolve. The Department of Transportation has talked about it for months, and it ended up in my hands. It is like a lot of things that happen in your public life. Maybe you did not ask for it, but you ended up getting it. I would like to resolve it in as short a time as possible.

Mr. MITCHELL. Mr. President, I yield to the Senator from New York.

Mr. MOYNIHAN. Mr. President, while the two leaders are on the floor,

if I could say, I think the essential fact is that there is, at most, one substantive amendment left; not that the issue is not important as between Iowa and Illinois, but it is not part of a national transportation policy.

There is one substantive amendment left, and whether it will be offered, and what will happen to it, depends entirely on reaching agreements on distribution of funds, which we are trying to do on the floor. Once that is done, you have a bill. I mean, 12 minutes, and that is all.

Mr. MITCHELL. Mr. President, I appreciate the Senator's optimistic assessment, and we hope, of course, that it does prove to be correct.

Mr. MOYNIHAN. This could be a long one.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

TRIBUTE TO MAYOR PATRICIA KURAN

Mr. LAUTENBERG. Mr. President, I rise today to join the citizens of Fanwood, NJ, in paying tribute to Mayor Patricia Kuran, a distinguished public servant. On June 23, she will be honored for her many years of service to her community and to the State of New Jersey.

Mayor Kuran was born in Union Township and moved to Fanwood in 1959. In 1978, Mayor Kuran was elected to the borough council, beginning her career in public service. In 1983 she became the first woman, and the first member of the Democratic Party, to be elected mayor of her borough.

During her 8 years as mayor, Kuran distinguished herself by encouraging environmental responsibility through such initiatives as Fanwood's community wide cleanup and establishing the town's recycling center. Mayor Kuran also resolved most of the borough's severe flooding problems by acquiring three acres in 1984 which became part of the Fanwood Nature Center.

Earlier this year, the mayor announced that a back injury will prevent her from seeking a third term as mayor. A tireless servant to the borough of Fanwood, Patricia Kuran will be missed. I am honored to join with the people of Fanwood in extending my heartiest congratulations as she is honored and extend to her my warmest wishes for good health and happiness in the future.

A TRIBUTE TO LEE ATWATER

Mr. THURMOND. Mr. President, I rise today to pay tribute to a beloved son of South Carolina and a great American, my good friend Lee Atwater, who passed away on March 29, 1991. Lee's passing leaves an unfillable void in the political landscape of this Nation and in the hearts of his many friends and colleagues.

Lee Atwater was one of the finest men I have ever known. He was a man of great courage and character whose talent and intelligence were rivaled only by his boundless energy. He was one of the most unique and able individuals I have encountered in politics, and he left an impressive legacy.

Lee was gifted with keen intelligence and an outstanding grasp of political nuance. However, even more importantly, he put those gifts to work with an energy and persistence which few could match. He was a one-man army, fighting on the side of his candidate and his party, and his exuberant style and wit became the stuff of legend.

Lee believed passionately in the American way and was devoted to electing candidates who would cherish the ideals upon which this Nation was founded. He was an unapologetic conservative with the courage of his convictions, and he was a significant force in revitalizing the conservative movement in America.

Lee Atwater was as renowned for his unique personality as for his political acumen. His love of rhythm and blues music and his fondness for cult movies and pork rinds were as familiar to his friends and colleagues as his political philosophy. He had a great zest for life which was an inspiration to us all.

Lee was a complex man, and like so many outstanding people, his gifts were not limited to one field. In addition to his skill as a political operative, he was a talented musician and he took great pleasure in playing the guitar and singing with his friends. He also enjoyed athletics and was a devoted runner.

I first knew Lee Atwater when he came to my Senate office as an intern in 1972. Although a very young man, he already had unusual political instincts and the determination to make something of them. Not too many years later, he was serving as political director for my 1978 Senate race, and he went on to become one of the most successful political operatives in the Nation.

His success was aided by his almost uncanny instinct for the feelings of the American public, a sort of political sixth sense. Although he was a true southerner, his career attests to the fact that his perceptiveness was not limited to southern voters. Many of the candidates he worked with owe their political lives to this special talent.

Although Lee helped to elect two Presidents, it was not until his illness that he began his greatest campaign. In his valiant struggle for survival, he turned at last to the lord. With characteristic zeal, he committed himself completely to becoming a witness for Jesus. Even as he sought a cure for his illness, he helped to bring the good news of the gospel to the millions who read of his new-found faith.

Mr. President, Lee Atwater was an outstanding man in every way. He was a fine husband and father. He was a great patriot, an astute politician and a loyal and devoted friend. Above all, he was an exceptional human being, and his valiance in the face of death was an inspiration to all who knew him.

I extend my deepest condolences to his lovely wife, Sally, and his three beautiful daughters, Sara Lee, Ashley Page, and Sally Theodosia, his devoted parents, Harvey D. and Alma Page Atwater, and the rest of his fine family.

Mr. President, I ask unanimous consent that excerpts from the excellent remarks of several prominent leaders and friends of Lee Atwater's be inserted in the RECORD immediately following my remarks, along with an article from the Charleston News and Courier and editorials from the State newspaper, the Charleston News and Courier and the Aiken Standard.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXCERPT FROM REMARKS BY VICE PRESIDENT DAN QUAYLE AT THE FUNERAL SERVICE FOR LEE ATWATER, COLUMBIA, SC, APRIL 1, 1991

Lee wasn't a political mercenary, simply serving the highest bidder. Politics wasn't his business; it was Lee Atwater's calling in life.

EXCERPTS FROM REMARKS BY SECRETARY OF STATE JAMES BAKER AT THE MEMORIAL SERVICE FOR LEE ATWATER, APRIL 4, 1991

Like me, I'd be willing to bet that a lot of Lee's friends and admirers—not to mention his detractors—are finding it hard to imagine a self-professed bad boy like Lee up there with the angels. But that's exactly where Lee is, and the angels are just going to have to adjust.

During his year-long battle with cancer, I used to visit him on my way home in the evening and many times we'd read passages from the Bible. Lee particularly liked those about the peace that comes with faith. Above all, there was the quote from Isaiah (40:31): "They that wait upon the Lord * * * shall mount up with wings as eagles, and shall run and not be weary."

To the end, Lee fought his illness bravely, with the same aggressiveness, discipline, and energy that he brought to everything, whether it was running for the distance or running political campaigns.

EXCERPTS FROM REMARKS BY HARRY DENT AT LEE ATWATER'S FUNERAL, COLUMBIA, SC, APRIL 1, 1991

I have known of no one who has given a better message to the world on repentance and the golden rule than Lee Atwater in the last months of his life.

As Lee has taught us, there is that very simple requirement: Examine your life—hon-

est to God—and if you are not in the faith, repent and submit to the lordship of Jesus Christ, get with the golden rule and begin to love even your enemies as much as you love yourself.

I can hear Lee right now: That's right, Harry, convert your enemies by loving 'em to death! That's a great strategy! Jesus' politics really does make sense, and most of all, it works too!

EXCERPTS FROM REMARKS BY DOUG COE AT THE MEMORIAL SERVICE FOR LEE ATWATER, APRIL 4, 1991 AT THE WASHINGTON CATHEDRAL

In 1959 when I first came to Washington, an elderly gentleman who I respected very much told me that if you really like someone you sometimes loan them money, but if you really love them you will be willing to give them your friends.

In this spirit, I will forever be in debt to a few of the friends here this morning who gave me the opportunity of knowing their friend, Lee Atwater. The experience of this last year with him has left an indelible impression on my mind and in my life.

He was always amazed that so many of you would come to see him and tell him you were praying for him. It struck him strongly that this happened also with some of his political enemies. He saw that a spiritual bond was stronger than anything else, even overcoming political division.

[From the Charleston News & Courier, Mar. 29, 1991]

ATWATER YIELDS IN LAST BATTLE: FORMER GOP DYNAMO DIES OF CANCER AT 40

(By Steve Piacente)

WASHINGTON.—Lee Atwater, who gained a tough reputation with his feisty leadership of the Republican Party, died early today after more than a yearlong fight against a malignant brain tumor.

The 40-year-old South Carolinian had stabilized after a sharp downturn recently, but he finally yielded to a condition some doctors expected to take his life months ago.

"Barbara and I lost a great friend," said President Bush, whose 1988 campaign was managed by Atwater. "I valued Lee's counsel and abilities. The Republican Party will miss his energy, vision and leadership. Barbara and I give our deepest condolences to Sally, the kids and Lee's parents. We share in their grief. Lee will always be in our memories."

Atwater and his family also were cited recently by Vice President Dan Quayle as "an example to us all. Their courage has taught both admirers and detractors a good deal about the human spirit," Quayle said. "We've seen once again he's a fighter—the same fighting spirit that always energized his campaigns. In my mind he'll always be a winner."

Atwater died at 6:24 a.m. in George Washington University Medical Center from complications stemming from his brain tumor, according to Republican National Committee Chief of Staff Mary Matalin. His funeral will be held in Columbia, S.C. A memorial service also will be held in Washington in the coming weeks.

RNC spokesman B.J. Cooper said Atwater was "at peace and comfortable," alert and conversant in recent weeks.

Atwater received a visit Thursday from former President Reagan, who was in Washington for an appearance at George Washington University, a White House aide said.

"The Atwater family thanks all of Lee's many friends, who for the past year especially, shared strong support, deep love and daily prayers," the RNC statement said.

Clayton Yeutter, who succeeded Atwater as RNC chairman in January, said Atwater's death "takes from us one of the nation's most outstanding political minds."

Not only had Atwater run a presidential campaign and become chairman of the Republican Party, but he also had attained his dream of performing with some of the greatest rhythm and blues musicians. An accomplished guitarist and blues singer, Atwater was featured with B.B. King, Isaac Hayes and Billy Preston on "Red, Hot and Blue," a rhythm and blues album issued last spring.

Harvey Leroy Atwater was born Feb. 27, 1951, in Atlanta, but grew up in Columbia. A poor student in high school, Atwater got his start in politics from U.S. Sen. Strom Thurmond, R-S.C., after his sophomore year at Newberry College.

Atwater eventually became chairman of the S.C. College Republicans, using the post to drum up youthful support for Thurmond around the state.

"He came to me as an intern when he was in college," Thurmond recalled in a recent interview. "He was here and I saw he had a very apt political mind."

After graduating in 1973, Atwater became executive director of the College Republicans' national office in Washington. It was in that position that he first met Bush, then chairman of the RNC.

Atwater set up a political consulting firm in Columbia in 1974, and subsequently managed 28 winning GOP campaigns in the South over a four-year period. Included were Thurmond's 1978 campaign, and Gov. Carroll A. Campbell Jr.'s first race for Congress.

The street-fighting reputation for which Atwater became nationally known was developed during that period, winning Atwater both passionate friends and bitter enemies. In 1980, critics accused him of foul play in a congressional race between Rep. Floyd Spence, R-S.C., and Democrat Tom Turnipseed.

Noting that Turnipseed had undergone psychiatric treatment and electroshock therapy, Atwater said he would not respond to someone who had once been "hooked up to jumper cables."

Atwater, during his long illness, wrote many letters of apology, including one to Turnipseed.

In the 1988 presidential contest, Atwater was denounced for tactics used to portray former Massachusetts Gov. Michael Dukakis being soft on crime. The now-infamous "Willie Horton" TV ad told of a black convicted felon who raped a white Maryland woman while on weekend furlough from a Massachusetts prison.

Critics said the ad was a blatant appeal to racial prejudice. Bush's campaign insisted the issue was crime, not race.

Atwater was unanimously elected chairman of the RNC soon after Bush became president in January 1989, but more trouble soon followed.

In March of that year, students at Howard University, a prestigious black college in Washington, vehemently protested Atwater's naming to the school's board of trustees.

Still bitter about Atwater's tactics in the Bush campaign, Howard students occupied campus buildings until the RNC chairman finally resigned from the board.

A second personally painful incident occurred that June. It centered on an "attack memo" designed to link House Speaker Thomas Foley, D-Wash., to a homosexual congressman. Mark Goodin, an Atwater protege and close friend, was forced to resign from the RNC in the wake of intense criticism from both Democrats and Republicans.

Atwater, however, came up shining, at least in his own party. Ron Brown, chairman of the Democratic Party, called Atwater's tactics a disgrace."

In December 1989, after several relatively quiet months, Atwater and the RNC rented a posh downtown nightclub and threw a glitzy Christmas party. All seemed to be going perfectly.

Three months later, on Monday, March 5, 1990, Atwater was speaking at a fund-raiser for Sen. Phil Gramm, R-Texas, when he suddenly collapsed. After doctors discovered what they then called a small, non-malignant brain tumor, Atwater quipped, "This proves to my legion of critics once and for all that I do have something in my brain."

Since that time, Atwater had undergone two major operations, the first of which had been designed to bombard the tumor with radiation. In a recent first-person account for Life magazine, Atwater said his illness taught him some things are more important than wealth, power and prestige.

"What power wouldn't I trade for a little more time with my family?" he wrote. "What price wouldn't I pay for an evening with friends?"

Atwater claimed his illness had changed his approach to politics.

He described in the Life article his changed relationship with Democratic Party chairman Brown.

"After the election, when I would run into Ron Brown . . . I would say hello and pass him off to one of my aides," he wrote. "I actually thought that talking to him would make me appear vulnerable.

"Since my illness, Ron has been enormously kind—he sent a baby present to (daughter) Sally T; he writes and calls regularly—and I have learned a lesson: Politics and human relationships are separate. I may disagree with Ron Brown's message but I can love him as a man."

[From the State, Mar. 30, 1991]

ATWATER WAS A WINNER

As a political tactician, Columbian Lee Atwater was something special. He was tough, resourceful and pragmatic. Largely for those reasons, he was a winner in local, state and national politics. George Bush's ascension to the White House attests, in considerable part, to his savvy.

In numerous campaigns here and around the nation and as chairman of the Republican National Committee, Mr. Atwater raised the hackles of political foes—they accused him of a "pit bull style of politics"—but he had their grudging respect and those who underestimated him did so at their own peril.

Friday, the 40-year-old Atwater lost a year-long battle with a brain tumor, a painful illness that sapped his strength and forced him to the sidelines, where he publicly apologized to political opponents for his tactics.

Lee Atwater was a rising star in the political firmament. Sadly, his bright, albeit controversial, presence there was all too brief.

[From the Charleston News & Courier, Mar. 31, 1991]

LEE ATWATER

When Lee Atwater was diagnosed as having a brain tumor, he approached his cancer much as though it were a political opponent. He threw himself and his staff into research-

ing the enemy; there were the daily strategy sessions and there was the risk-taking with experimental medicine. He fought with the kind of game plan and tenacity that had made him the country's most-feared political tactician. Sadly, early Firday morning he lost his most important war. But he died a winner.

When Lee Atwater was faced with his own mortality a year ago, after collapsing in the middle of a speech, he was, in his own words at the top of the world. He'd gotten his start as an intern in the office of South Carolina's political legend, U.S. Sen. Strom Thurmond, and he wound up running the campaign that put George Bush in the White House. He also was the chairman of the National Republican Party, the first professional campaign consultant ever to occupy that seat. And he'd done it all before his self-imposed deadline. He wasn't even 40.

It didn't seem to bother him then that he was known as the "bad boy" of politics. Indeed, he seemed to relish his reputation as the past master of negative campaigning. There were, however,, a few charges that got under his skin. At the height of his career, he was quoted in The New York Times Magazine as saying he regretted that he didn't use a white person, rather than Willie Horton, a black man convicted of murder, to paint Massachusetts Gov. Michael Dukakis as soft on crime.

"I have always known I had to go the extra mile to avoid being tagged a racist by liberal Northerners," he told an interviewer. ". . . Race, politically, is a loser." He continued to deny the charges of racism in a compelling, first-person account of his campaign against cancer in the February issue of Life magazine, in which he expressed other regrets and apologized to those he had wronged.

Few who knew him well believe he would have changed much about his life. But the Life article says he would have changed the emphasis. In fact, Robert McAlister, a close friend and aide to Gov. Carroll A. Campbell, believes Lee Atwater will be remembered more for the last year of his life than for the 39 that went before it. He spent most of his years acquiring knowledge, according to Mr. McAlister, but it was in his last year that he gained wisdom.

Mr. McAlister, a lay minister, already has memorized sections of the Atwater article to use when he addresses religious gatherings. "The '80s," Lee Atwater wrote, "were about acquiring—acquiring wealth, power, prestige. I know. I acquired more wealth, power and prestige than most. But you can acquire all you want and still feel empty. What power wouldn't I trade for a little more time with my family? What price wouldn't I pay for an evening with friends? . . . I don't know who will lead us through the '90s, but they must be made to speak to this spiritual vacuum at the heart of American society, this tumor of the soul."

Before the cancer struck, Lee Atwater wondered what his real test in life would be. In the past year, he endured more pain, displayed more courage and wrote about his trials with more honesty than most. He passed his test with flying colors.

[From the Aiken Standard, Apr. 5, 1991]

LEE ATWATER LEFT A RECORD THAT WILL LONG BE STUDIED

Lee Atwater lived in Aiken briefly during his childhood, and a few residents still remember him and his family. Mr. Atwater was better known among local leaders of the Republican Party, an organization in which he rose to the very top.

His climb through the barbs and tears of politics was an amazing success story. His detractors claimed his was a mediocre intellect and he an unprincipled politician.

But before he was 40, he had been credited with the electoral successes of two presidents, and he was on intimate terms with the leaders of government.

A brain tumor brought him down, and led him to profess born-again Christianity. In his last year—adherring to the principles he professed—he sought to correct any wrongs he had done in his political career.

We are not so sure apology was necessary. Political campaigns in which the principals pull their punches are rare indeed; it happened that Mr. Atwater knew how to use his punches effectively.

His untimely death—with his life only half lived—left a question in many minds. What might the "born-again" Atwater have accomplished had he been restored to health.

His funeral in Columbia's Trinity Cathedral drew many of the nation's great to pay respects to his memory. Among the mourners were 11 cabinet members and the vice president of the United States. Gov. Carroll Campbell and U.S. Sen. Strom Thurmond delivered eulogies, as did the vice president.

Even at the peak of his career, Lee Atwater, when he discarded the mantle of political operative, was a warm human being, a family man, a lover of music and of his fellow man.

Not many Lee Atwaters—or persons of his caliber—will pass this way in our lifetime. He left a record of accomplishment that will be studied by political scientists for many years to come, and an example of personal redemption that we will leave for theologians to dwell on.

COMMENDING AMERICAN AIRLINES ON AIRCRAFT SAFETY

Mr. NICKLES. Mr. President, Congress spends a substantial amount of time pointing out what is wrong with corporate America and developing ways to remedy the deficiencies. Unfortunately, Congress too often focuses on fixing what squeaks and overlooks the extremely positive measures undertaken by individual members of the business community.

I believe it is time to give credit where credit is due. It is therefore my great pleasure to come before this body today to applaud American Airlines. This company, which I am proud to say has a strong presence in my State, fully understands that the best way to run an airline is to devote every ounce of effort to ensuring consumer safety and customer satisfaction.

This overwhelming commitment to the traveling public has always been part of American's public service. Recently, American's efforts were recognized by the Federal Aviation Administration. In late March of this year, 24 FAA aviation safety inspectors and aircraft certification personnel completed an exhaustive examination of American's maintenance and operation programs. In a followup letter to Robert Crandall, president and chief operating officer of American Airlines, FAA Administrator James Busey commended the company for its commitment to safety. Admiral Busey was particularly pleased with the fact that American has its own extensive internal evaluation system in place to ensure that its maintenance and operations programs are of the highest caliber.

While I will not read the entire letter into the RECORD, I find his closing particular appropriate, he states:

We feel an obligation not only to oversee and evaluate, but to compliment organizations which measure up well to world class safety standards. Yours has done that, and we appreciate your effort.

I am honored to join Admiral Busey in giving American Airlines, and their more than 8,500 employees in Tulsa, the recognition they so richly deserve.

I ask to insert the letter from Mr. Busey, the Administrator of the FAA.

The letter follows:

FEDERAL AVIATION ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
May 21, 1991.

Mr. ROBERT CRANDALL,
President and Chief Executive Officer, American Airlines, Inc., DFW International Airport, Dallas, TX

DEAR BOB: On March 21 our Flight Standards Service completed a National Aviation Safety Inspection of American Airlines. A team of 24 Federal Aviation Administration aviation safety inspectors and aircraft certification personnel conducted an indepth review of American's maintenance and operations programs. While the inspection activity focused on specific areas, key programs were reviewed, including American's procedures for weight and balance control and aging aircraft maintenance.

During our inspection, the team favorably noted that American has implemented an internal evaluation program. The inspection revealed very few safety deficiencies, a fact we attribute in part to the success of your internal evaluation program.

We feel an obligation not only to oversee and evaluate, but to compliment organizations which measure up well to world class safety standards. Yours has done that, and we appreciate your effort.

Sincerely,

JAMES BUSEY,
Administrator.

COUNCIL ON COMPETITIVENESS

Mr. KASTEN. Mr. President, in the early 1980's, then-Vice President Bush spearheaded the Reagan administration's successful effort to reduce the regulatory and redtape burden on the productive sector, helping spark the economic recovery. Today, Vice President DAN QUAYLE is building on this effort through his effective leadership on the President's Council on Competitiveness.

The Vice President's Council has assumed the enormous task of reining in Washington's regulatory machine. This effort is needed now more than ever; regulations cost the economy at least $185 billion annually. The American public spent more than 5.3 billion hours filling out paperwork last year, enough to keep 2 million people doing nothing

but cutting through redtape year round.

This redtape burden hits the small business owner the hardest of all. Because I was a small businessman before entering public life, I have firsthand experience with the stifling burden of regulations and redtape. As ranking member of the Senate Small Business Committee, I am particularly concerned about the impact on small businesses. It's not right that you should be forced to hire extra workers for the sole purpose of filling out Government forms—as opposed to producing worthwhile, marketable products.

In a column entitled "Quayle's Sharper Edge," Warren Brookes writes that the Vice President has "single-handedly revived" the Office of Information and Regulatory Affairs, the office within OMB which monitors and reviews regulatory and paperwork demands that Federal agencies impose on the public.

Since 1981, OIRA has reduced the time the public spent filling out Government paperwork by almost 600 million hours each year. Using a conservative estimate of $10 per hour, this reduction has saved our economy $6 billion annually.

The President's power through OIRA to check the regulatory excesses of the Federal bureaucracy is essential to continued private sector growth, innovation, and wealth creation. That is why I have joined Senator SAM NUNN in introducing the Paperwork Reduction Act of 1991 to strengthen OIRA's power to restrain the bureaucracy's natural propensity to impose excessive regulatory and redtape burdens on our innovators and entrepreneurs.

A whole new framework of regulatory burdens imposed by the Clean Air and Americans With Disabilities Acts—both of which I support—are a threat to continued economic growth if Washington's bureaucrats are left unchecked. The Vice President's Council on Competitiveness is doing a tremendous job in making these new regulations manageable for small business. However, enactment of our paperwork reduction legislation would ensure that all Federal regulations achieve their goals in the least burdensome and most economical way possible.

I ask unanimous consent that the Brookes article appear immediately following my remarks:

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times]

QUAYLE'S SHARPER EDGE—TENDING THE HOME TURF

When President Bush's heart fluttered the media flew into an orgy of Quayle-quivering over the possible transition of power to someone pundits have tried to portray as a national joke.

But just a few days before this event, Rep Henry Waxman, California Democrat and ultra-liberal chairman of the House subcommittee on Health and Environment wasn't laughing at the vice president. He was fuming because Mr. Quayle, as chairman of the Council on Competitiveness has been stiffing Mr. Waxman's buddies, the regulatory zealots at the Environmental Protection Agency.

So much so, in fact, Mr. Waxman, the Alar congressman from Hollywood conned Ned Potter and Peter Jennings of ABC into a floridly fatuous assault on the council in which Mr. Waxman said it was "a secret kind of government that the vice president is in charge of that's going to rewrite the law."

There is of course no "secret" to the council's deliberations, nor is the process seditious in any way. Congress writes 700 pages of openended law and gives EPA a blank check to write 10,000 or so pages of regulation to implement it. Unless someone oversees this process, the crazies, like Mr. Waxman will destroy what's left of the U.S. domestic economy.

As vice president, Mr. Quayle has single-handedly revived the Office of Information and Regulatory Affairs within the Office of Management and Budget after Dick Darman had neutered it. OIRA reviews every regulation written by every federal agency.

When those regulations (as they so often do) produce massive costs but little or no benefits, OIRA ships them back to the agency for redoing. Since most of what EPA sends out involves cost over benefit ratios of from 50 to as much as 10,000 to 1, OIRA has become a serious thorn in its side.

For example, last December, the Quayle Council stopped a foolish EPA regulation that would have required every municipal waste combustor to recycle 25 percent of all incoming wastes. Not only would that impose massive new costs on these facilities, it would deprive them of basic fuel and thus power that they are committed to produce, all for no measurable benefits.

While ABC characterized this decision as "killing regulations to order recycling of trash that would be toxic if burned," the EPA's own studies show the provision would have added zero air pollution benefits for a cost of $100 million a year! No wonder the National Governors' Association (run by Democrats) opposed this stupid rule, and helped make EPA back down.

More recently, the council has been attempting to put some sanity into such things as risks analysis, corporate average fuel economy rules, and Clean Air permitting procedures.

That's why Mr. Waxman is screaming. One of the most econmically dangerous and irresponsible provisions of the Clean Air Act was to put EPA in charge of direct permitting of some 200,000 businesses on some 197 chemicals—a recipe for economic gridlock. The council is trying to make this nightmare for small business at least manageable if not bearable. For its efforts, Mr. Jennings' chosen congressional extremist, Rep. Gerry Sikorski, Minnesota Democrat, accused Mr. Quayle's Council of "Environmental treason."

This merely illustrates one of Washington's best-kept secrets: Dan Quayle has unobtrusively become one of the most effective pleaders for policy coherence in an otherwise incoherent administration. As New York Times former editor and now columnist Abe Rosenthal put it, "I think Mr. Quayle is far more able and sophisticated than he is drawn in the press and on TV. So do politicians and legislators I respect of both parties."

Last Tuesday, Mr. Quayle's Council on Competitiveness, which includes Treasury Secretary Nicholas Brady, Attorney General Richard Thornburgh, Commerce Secretary Robert Mosbacher, Chief of Staff John Sununu, Mr. Darman, and Economic Adviser Michael Boskin, issued a Reaganesque manifesto titled: "Taking on the Problem of Excessive Regulation."

In it, each of the agencies "renewed their commitment" to such things as ensuring "that rules clearly maximize benefits and minimize costs, based on sound analysis," and require agencies "to supply OMB with benefit and cost data about rules." The Council thumbed its nose at Mr. Waxman and formally enhanced OIRA's role "to strengthen the regulatory review process" in such things as Clean Air, Child Care and the Americans with Disabilities Act. It also announced that OIRA and the Council will formally review the Wetlands Delineation manual to ensure a "balanced policy" that protects private property rights.

Perhaps the most important element in this new manifesto was "Protection of Constitutional Property Rights" in which the Council went on record in full support of executive orders and new legislation to require agencies to compensate property owners whenever these policies (like wetlands or endangered species) result in a value reduction and thus a "taking" of property. It even proposes that such legislation "provide agencies financial incentives to use caution before issuing regulations that 'take' private property rights."

This is a ringing reaffirmation of the ascendancy of private property rights against environmental "land use" planning, and it is a major triumph by Mr. Quayle's Council over the turf-hungry bureaucrats at both EPA and the Interior Department.

This may explain the real reason why liberals are so nervous about the eventual possibility of a Quayle administration. It might actualy revive the pro-market cause in government.

DEMOCRATIC HEALTH PLAN BAD FOR SMALL BUSINESS

Mr. KASTEN. Mr. President, the rising cost of health care is the top issue on the minds of small business owners in Wisconsin and across the country.

Of the 34 million Americans without health insurance, more than 18 million work in small businesses or are dependents of workers in small businesses. According to a 1990 survey conducted by the National Federation of Independent Businesses, two out of three small businesses would offer insurance if it was affordable. Further, 22 percent of the uninsured are self-employed workers.

The first step that Congress could take tomorrow would be to allow self-employed workers to deduct 100 percent of their current health care expenses instead of the 25-percent deduction allowed under current law. I, along with several other Senators, have introduced legislation last year and this year to level the playing field between small and big business. Hopefully, we can act soon to enact insurance market reforms and cost containment measures which would also enable small business owners to provide health insurance to their employees.

But what small business doesn't need right now is the solution offered by the Senate Democrats' plan. Their solution is to mandate that small business either offer health insurance they cannot now afford or pay a Federal tax. This is the surest way to drive the small business owners, the biggest job creator in our economy, out of business. In short, the Democrats' proposal is a job-destroying bill.

The June 11, Wall Street Journal, contained an excellent editorial outlining why the Mitchell-Kennedy bill is the "wrong prescription for the uninsured." I ask unanimous consent that this editorial by John Goodman, the president of the National Center for Policy Analysis, be inserted in the RECORD, as follows:

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, June 11, 1991]

WRONG PRESCRIPTION FOR THE UNINSURED

(By John C. Goodman)

To solve the problem of 34 million Americans without health insurance, Senate Democrats have unveiled a new health-care plan. Ever faithful to the big government, big bureaucracy point of view, George Mitchell (D., Maine), Edward Kennedy (D., Mass.), John Rockefeller (D., W.Va.) and Donald Riegle (D., Mich.) propose to take a manageable problem and turn it into a major disaster.

Under the bill's "pay or play" plan, employers would have a choice: pay a federal tax, tentatively set at about 7% of payroll, or provide health insurance to their workers containing core benefits defined in Washington. If employers decide to pay the tax, government will assume responsibility for providing health insurance and employees will pay premiums that vary based on income level.

For example, a $2,500 family health insurance premium for a worker earning $20,000 costs 13% of payroll, not 7%. In this case, the obvious choice for the employer is to pay the tax and turn the problem over to government. Indeed, considering that about 95% of all uninsured workers earn less than $30,000, in the vast majority of their cases employers will have strong incentives to pay the tax rather than to begin providing coverage themselves. (The cost of the core-benefit package will vary depending on the benefits included, and the age, occupation and geographical location of employees. The $2,500 example is a very conservative number; the current average cost per employee in the U.S. is $3,217.)

THE TEMPTATION

This is not necessarily good news for the uninsured. Assuming uninsured employees are already paid a fair wage, a 7% payroll tax means that their employers will have to cut wages by 7% or lay off workers. Since those earning the minimum wage can't by law take a wage cut, they stand the greatest risk of becoming unemployed.

Employers who already provide health insurance to their employees also will compare the 7% tax with the cost of a health-insurance policy containing federally mandated benefits. A great many of them will be tempted to pay the tax and drop existing coverage. Nor is this mere speculation. A Kennedy aide says the bill's sponsors expect this to happen.

Lee Iacocca will like this plan. For years he's wanted to dump Chrysler's health-care costs on government, and the Senate Democrats are offering him a chance. Instead of paying what I estimate to be close to $4,000 per employee for private insurance. Mr. Iacocca could pay a tax of less than $3,000, have government provide each Chrysler worker with health insurance, and make a handsome profit. (If they have any sense, Chrysler workers will resist this mightily.)

If employers decide to provide health insurance to their employees, they will be required under the bill to include mental-health benefits (the fastest-rising component of health-care costs) and preventive procedures, including mammograms, pap smears and well-child care (items for which costs double when the administrative costs of third-party insurers get factored in). The required out-of-pocket deductible is only $250. Employers could charge a higher deductible only if they provided additional benefits to those in the core package—not to cut costs.

Count on the benefits expanding and the costs rising once the special interests get their hands on the bill. In response to provider pressures, state governments have enacted more than 800 cost-increasing mandated benefits, requiring insurers to cover services ranging from acupuncture to in-vitro fertilization. All this means that individuals have to pay for coverage they do not want. Though the Senate Democrats' bill would override these state mandates—in an attempt to control costs—the lobbyists can be expected to move to Washington and continue their push for coverage of more and more services.

If employers exercise the option to pay the tax rather than provide health insurance, what happens to the workers? Rather than purchasing a private health insurance policy on their own, they will be required to join Medicaid. In fact, if you have any desire to toss away your private health insurance and join Medicaid, you'll love the Senate Democrats' new health-care plan.

Granted, under the Democrats' plan Medicaid would be reorganized. It would also have a new name—"AmeriCare." But Medicaid under any name is still Medicaid.

In most places, Medicaid pays doctors and hospitals 50 cents on the dollar—sometimes even less. As a result, doctors increasingly won't see Medicaid patients and access to hospital care is increasingly limited to charity hospitals.

Because Medicaid underpays, healthcare rationing is inevitable. And more severe rationing is right around the corner as the hospital marketplace becomes more competitive, cost-shifting to other patients becomes less feasible and government at all levels has less money to spend. So far, only Oregon publicly admits that rationing in its Medicaid program is routine. Medical providers know the same thing is happening in every state.

If readers get a sense of deja vu, it's probably because they have heard this before. The Senate Democrats have endorsed the very plan that Michael Dukakis created for Massachusetts. Voters may recall Mr. Dukakis's 1988 boast that everyone in Massachusetts had health insurance. Well, not quite. The Massachusetts Legislature wants to delay the private sector's entry into the program until 1994, and the current governor wants to kill the whole program.

One problem is that government is inherently incapable of administering an insurance program that prices risk accurately. Witness the deposit insurance debacle at the federal level and the auto liability insurance crises in California, New Jersey and Massachusetts. In Massachusetts, auto insurance has become so politicized that any possibility of rational premium prices has vanished and 65% of all premiums now go to the state risk pool.

The Senate Democrats have already signaled they have no interest in insurance prices based on real risks. The 7% payroll tax has no relationship to the actual cost of health for any particular employee. And they are proposing a quasi-cartel in the small-group health insurance market to guarantee that private insurance premiums won't reflect real risks either. This will speed the exodus of people into Medicaid (oops, AmeriCare), the risk pool of last resort.

A second problem both for Massachusetts and the Senate Democrats is small business, which employs most of the noninsured workers. Does it really make sense to heap new taxes on small business—the job-creating sector of the economy—in the middle of a recession? One suspects that even the senators would answer "no."

In fact, one suspects they're not really serious about the proposal at all. The plan proposes a two-year grace period for new small businesses and a five-year grace period for firms with fewer than 25 employees—the firms where almost half of all uninsured workers are employed. Like Mr. Dukakis, the Senate Democrats propose to talk now and act later—definitely after the next election.

A third problem is health-care costs—which are bound to rise as more people acquire health insurance. Initially Senate Democrats propose "voluntary" spending limits with targets for the total amount spent on physicians fees and hospital services throughout the country. But since the nation's 5,000 hospitals and 500,000 doctors could not possibly agree collectively on anything, the targets are bound to be missed, and "voluntary" will soon become "mandatory."

This is precisely the approach taken in countries with national health insurance, where governments set aribitary budgets for hospitals and area health authorities and force the providers to ration health care. The result is a lower quality of care and more—not less—inefficiency.

While 700,000 people wait for surgery in Britain, at any one time one of four hospital beds is empty. While 50,000 people wait for surgery in New Zealand, one out of five beds is empty. As the waiting lines grow in Canada, the politics of bureaucracy determines who gets the next brain scan. In all three countries, about one in every four hospital beds is filled with the chronically ill elderly, using the hospital as an expensive nursing home.

LISTEN TO BENTSEN

Bureaucratic health-care rationing is anything but fair. Although health care is theoretically free in England, 12% of the population now has private health insurance. In New Zealand's "free" health care system, one-third of the population has private insurance and one-fourth of all surgery is performed privately. In Canada, where private health care has been virtually outlawed, the U.S. border is the safety valve. For example, about 100 Canadians get heart surgery every year at the Cleveland Clinic.

Before taxing small business to pay for an expanded Medicaid program with health-care rationing required by limits on spending, the Senate Democrats should listen to their col-

league Lloyd Bentsen (D., Texas), author of refundable tax credits for the purchase of health insurance. Instead of pushing more people into a government rationing program, the Bentsen approach would empower low-income families and make them real participants in the health-insurance marketplace.

REGARDING THE NATIONAL VICTORY CELEBRATION

Mr. WARNER. Mr. President, more than 10 months ago, the world was shocked when Saddam Hussein sent Iraqi troops to invade Kuwait. Governments the world over expressed their outrage at this lawless act of cruel and gruesome aggression. As the United Nations moved to condemn Iraq's actions and began to arrange for the protection of Kuwait's threatened neighbors, one nation moved a step further. The President of the United States ordered American soldiers to the Persian Gulf to provide protection for Saudi Arabia and other potential victims of Saddam Hussein.

From the onset, I supported President Bush in these courageous efforts. To the President's great credit, he had in place a team of military and civilian leaders ready and willing to provide the leadership that would make Operations Desert Shield and Desert Storm so successful. Secretary of Defense, Dick Cheney, Joint Chiefs of Staff Chairman, Gen. Colin Powell, and field commander, Gen. H. Norman Schwarzkopf formed the triumvirate that orchestrated, with the military forces of some 28 countries, the defense of the Arabian peninsula and the ultimate liberation of the State of Kuwait. Meanwhile, Secretary of State, James Baker tirelessly traveled the globe to facilitate the diplomacy of such a massive international undertaking.

For the superb execution of their duties under the most trying circumstances, each of those men deserves the congratulations and gratitude of all Americans.

As we take this opportunity to cast out our plaudits to those who achieved victory in the gulf, praise cannot go only to those whose faces we saw on the evening news, but our unparalleled praise and gratitude must go to each and every one of the men and women serving in the United States Armed Forces.

Enough cannot be said of the devotion and professionalism of the American servicemember: those individuals whose love of country is so strong that they stoically abide the sands and seas of another land in the defense of liberty. Over 450,000 of them left the security of home and family for the broiling heat of the Arabian desert. Tens of thousands of others played integrally important roles from bases here at home and throughout the world.

And on January 16, with the support of the Congress and the United Nations, and in concert with the Allied Forces, the waiting came to an end: Operation Desert Shield became Operation Desert Storm, and the liberation of Kuwait had begun.

In Washington, and in every city and town, America watched the television reports that so vividly displayed the intensity of the conflict. We witnessed the deployment of the Patriot missiles and their successful midair interceptions of SCUD's. We watched the flaming tails of the Tomahawks as they launched from battleships. Daily we saw the pinpoint accuracy of the smart bombs deployed so skillfully by our brave pilots.

I had the great privilege of standing alongside the crew of the U.S.S. *Missouri* as they launched a Tomahawk toward an Iraqi target during one of the three visits I made to the Gulf region during the deployment of our troops. On each trip, I was deeply impressed by the commitment and expertise of the soldiers in the field.

Meanwhile, at home, flags were flown; yellow ribbons, symbolizing our love for those serving in the Gulf and our anxious await for their return, were displayed everywhere from car antennae to the White House porch.

And now our troops are coming home. There is cause for celebration.

On June 8, a great celebration took place here in Washington. Sponsored by the Desert Storm Homecoming Foundation, the celebration gave tribute to all the men and women of the Armed Forces.

I am particularly proud that during the celebration Miss Ashton Nolley, a young lady from Virginia, performed an original song, "America, Can You Hear Me?" Her song is a moving testimonial to the bravery and commitment of the American servicemenber. It verbalizes some of the feelings of loneliness and uncertainty that many servicemembers experience. I will respectfully request that the text of the song be entered into the permanent RECORD of the proceedings of the Senate as a reminder not only of harrowing feats of men and women in American uniform, but of the support and love of those of us they so nobly serve.

Amid the excitement of the moment, let us not forget to pay tribute to those men and women who remain in the Persian Gulf. We should also pause to remember those who, fallen in the line of duty, cannot be here to share the glory of their returning comrades-in-arms. The Bible says, "Greater love hath no man than this, that a man lay down his life for his friends." We give thanks for those who have gone before us in the service of their country, and take solace in the knowledge that they go on to an even greater glory than is known on Earth.

I ask that the lyrics of "America, Can You Hear me?" be printed in the RECORD.

There being no objection, the lyrics were ordered to be printed in the RECORD, as follows:

"AMERICA, CAN YOU HEAR ME?"

America can you hear me?
I'm running with a rifle in my hand.
America can you hear me?
My best friend just fell to the sand.

History in the making
Blood on our hands,
Cries for freedom
Across the lands.

Praise to the soldier let our voices roar!
For freedom a life is sacrificed once more.
As the bullets start flying, a light above will shine
And a hero is born again for all mankind.

America can you hear me?
Does anybody even know my name?
America can you hear me?
Oh God, don't let me die in vain!

Freedon is the answer
For the world someday,
In the light of death, Lord
Let us pray.

Praise to the soldier let our voices roar!
For freedom a life is sacrificed once more.
As the bullets start flying, a light above will shine
And a hero is born again for all mankind.

Too soon we forget the scars of liberty,
The lives that were lost to make this country free.

Let us sing
Praise to the soldier let our voices roar!
For freedom a life is sacrificed once more.
As the bullets start flying, a light above will shine
And a hero is born again for all.

America can you hear me?
I'm running with a rifle in my hand.
America can you hear me?
Please! help me try and understand.

ELENA BONNER'S ADDRESS TO THE SAKHAROV MEMORIAL CONGRESS

Mr. KENNEDY. Mr. President, I would like to take this opportunity to recognize the achievement of Elena Bonner, widow of the renowned Soviet scientist and human rights leader, Andrei Sakharov. Through her tireless efforts, the First International Sakharov Memorial Congress, entitled "Peace, Progress and Human Rights," was convened in Moscow on May 21–25, 1991.

This congress took place during what would have been Andrei Sakharov's 70th birthday and brought together an extraordinary range of individuals to advance the causes to which Sakharov dedicated his life. As Ms. Bonner eloquently stated, "Sakharov defended the individual, the human personality, the right to personal convictions, the right to choose one's own way of life, the right to freedom, and the simple right to happiness."

Reflecting Sakharov's dual commitment to human freedom and scientific progress, the memorial congress fo-

cused on both the future of Soviet and Eastern European transitions from totalitarianism and the aftermath of the nuclear disaster at Chernobyl. In addressing these critical issues, the participants of the congress carried on the critical work of Andrei Sakharov.

Elena Bonner deserves special praise for making this important congress possible. It brought great honor not only to the memory of Andrei Sakharov on the anniversary of his birth, but also to his ideals that live on in the hearts of his fellow citizens.

I believe Ms. Bonner's speech at the opening ceremony of the First International Sakharov Memorial Congress will be of interest to my colleagues, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS OF ELENA BONNER, OPENING CEREMONY OF FIRST INTERNATIONAL ANDREI SAKHAROV MEMORIAL CONGRESS, MOSCOW, MAY 21, 1991

Good evening!

Today would have been Andrey Dmitrievich's seventieth birthday. The anniversary has come at a hard time for the country, of which Sakharov was a citizen according to his birth right and his bitter right to lie in its soil. But he was also a citizen of the Earth because of his love of it, and his inflexible struggle for preserving peace.

In our supermilitarized state he was the only scientist who struggled for peace all over the planet with complete professionalism, absolute courage, absolute honesty and total independence: free from the interests of certain parties, groups, departments, or one governmental system.

With equal staunchness, Sakharov defended the individual, the human personality, the right to personal convictions, the right to choose one's own way of life, the right to freedom, and the simple right to happiness.

He defended the Chinese in Indonesia and the students from the Celestial Consent square sentenced to death, the Palestinians in the Tel-Zaatar camp, Afghan mujahedin, Iraqi Kurds, Azerbaijanis in Iran. He defended his compatriots: Russians, Germans, Jews, Buryats, Georgians, Uzbeks, Tatars, Azerbaidjans, Ukranians, Lithuanians, Armenians. And he tirelessly defended the right of every people to self-determination. And he also saw the prime obligation of the state as the defence of the weak.

But he was not a man of nonresistance or an absolute pacifist. A defender of the law as one of the highest achievements of civilization and a convinced evolutionist, he did not reject the possibility of revolutionary social development. From a truly democratic position he defended the workers right, to strike:—whether economic or political. He considered that industrial action could prevent a revolutionary explosion, but more importantly—could create conditions in which the old political structures would resign peacefully without violence.

Being especially concerned about national problems he used to say that in a dead-end situation, consensus is a meaningless word, and any decision on the inviolability of borders becomes a way of protecting the State system. In the conditions of our country this means the defence of Stalinism. Sakharov repeatedly stated that the right of a people to self-determination is more important than all other rights for any national community. And he never regarded the victim and the hangman as equals! Such a wide spread and immoral excuse for any inaction was absolutely unacceptable to him.

We quickly managed to put behind us the shaken ourselves very soon soon and hurried to events in Alma-Ata, Sumgait, Kirovobad, Tbilisi, Baku, Dushanbe and the Baltic states. We are also in a hurry to forget Ossetia. To refresh our memory and awaken our humanity, blood is being shed in Karabakh today.

And before we speak fine words about Sakharov I ask you to rise for a minute of silence in memory of all who have perished in this country over recent years and in the last month of May, when our brave Soviet, our Azerbaijan OMON fighters generously shed people's blood on the soil of the Caucasus. Thank you! Please be seated.

I declare open the First Sakharov International Congress "Peace, Progress Human Rights" officially open. It was planned and is to be conducted absolutely independent of all state and government organizations of the USSR and other countries. Main funds were received by the Congress from independent media: "Argumenty i Fakty", "Moskovskiye Novosty", and "Ogonyok". Main hard currency funding was provided by "Alitalia" airline company and the Federation of American Trade Unions. The list of all sponsors of the Congress will be published.

As a result of 18 month in tense on the part of work of four people in the USSR, one person in Italy, and two in the USA, we are able to meet each other in this hall.

What is the idea of the Congress, apart from the fond memories of the late? Together we are going to repeat what Sakharov was doing alone. We will talk about the most critical problems of the present professionally and honestly. But to talk is only a part of the task. We want to be heard by those on whom the solution of the problems put forward depends, and not afterwards, as Sakharov was, not in ten or twenty years time, when everything will be too late, but today.

One Congress cannot cover all the malaises of the contemporary world. We have chosen two subjects for our work. They are: "Chernobyl (The past, present, and future)" and "The Soviet Union and East European countries on the way from totalitarianism to the rule of law". Far from removed one other at first glance, they are linked by Sakharov himself, as a scientist and a public leader.

Scientist Sakharov was not only the "father of the Soviet H-bomb" (a media cliche that should be laid to one side). Sakharov was the pioneer in the field of theoretical studies of peaceful application of thermo-nuclear energy.

Sakharov was undoubtedly in favour of the development of nuclear power engineering, believing that it would make possible the raising of living standards of people all over the world. Not to reduce them in rich countries, but to raise them in the poor ones.

In his article "Nuclear Power Engineering and Freedom in the West", he proves that it is necessary for democratic countries to become oil- and in general power-independent on the power exporting countries. The recent war in the Gulf once again proves that he was right. Having touched upon this subject, I would say that the UN and the members of the Security Council have no right to let Saddam Hussein's crimes against the environment, which threaten the whole planet, go unpunished.

According to Sakharov, the Chernobyl catastrophe was not only the consequence of technical errors, mistakes made by the personnel and the low quality of construction, but above all it is evidence of the defectiveness of the social system. He considered "Chernobyl" to be as the highest "achievement" of socialism.

The second topic, which had seemed precisely formulated, was becoming doubtful one and a half years ago later. Questions have arisen: "Are we on the way from totalitarianism to the rule of law? Aren't we simply walking on the spot? Aren't we going backwards?" The stages of this transformation are well-known:

The indirect election of the President, his initial and the subsequent additional powers, the simultaneous process decay of the Union going simultaneously, the seige of Lithuania as an answer to the legal and constitutional declaration of its independence, the governments "Principal Directions" instead of an economic program, the first draft Union treaty, which in fact rejected the sovereignty of republics, the second slightly improved draft, about which we know nothing, as it we simply do not know which one is under discussion today: it has not been published, the decree on the protection of property which turned into the protection of this was Communist Party of property, and led to the tragic events in the Baltics—the decree on joint patrols, this was a hush-hush privatization by the bureaucratic-nomenklatura, not for the sake of the people, but against it.

And the last event: the recent agreement signed by the leaders of the nine republics and the President. It is considered as a document opening up not the best, but some kind of a way forward and as a cease-fire in the battle which in the public conscience is formulated as "Gorbachev or Yeltsin". But in fact it is a far from finished struggle by the republics against the Center of the former Soviet Union for real independence. Creation of sovereign states in place of the totalitarian empire under the pressure of which our peoples existed for 73 years—it is undoubtedly a progressive process and the fact that it can lead to the appearance of regimes far-removed from democracy (as happened in Georgia) is the result of the activities of the Center. In this case it is the direct result of gas and spades in Tbilisi.

I return to the "Nine plus one" Agreement. Its assessement of the strike movement has an anti-worker character and the idea of the favorable status for those republics which are participants of the agreement seriously puts one on his guard. And the consequent bloody events in Karabakh directly show what kind of consequences await those republics which have not signed the Agreement. Again as in January, after Vilnius and Riga, the question comes up: "Who is next?" Moldova? the Baltics again? Georgia, where Ossetia has been already set alight?

Today Russia is waiting for the Presidential elections. We were waiting for the Referendum and the Congresses, waiting for laws which were to make our life at least slightly better. We were expecting the price increases for a long time. We got them, but 100-rouble banknotes were frozen in advance. We do now know what we are to expect after June 12.

They frighten us with talk of hunger and civil war. But there is a great deal of hunger over the greatest part of the country, and a war is already on, not the civil one, but between the old Stalinist system and newly ap-

pearing one. In its agony, the old regime defends its power, the leaders of the party defend their property which is separate from the people. The paradox is that through thus the party calls itself Communist. The result of property protection is the spilling of blood. Blood was shed in Baku and Tbilisi in defence of the Central Committee. The property of the party was being defended in the Baltics. Blood in the Karabakh is in answer to the independence declaration by Armenia and the nationalization of Party and Komsomol property.

Until the Party gives back everything to the people, to the last wooden (or, as it is now called, Pavlov) rouble—Stalinism will be triumphant.

And it will exist until we survive an epoch of true sovereignties. It is high time for us to say plainly: sovereign states can unite only in confederations. Our future (if we want a free one) is confederation, and all that is said about a new or old federation is just fiction.

Why are fascist states not so tolerant as totalitarian systems? They always have an element of sovereignty left: private property.

And the idea of democracy is the range of sovereignties: of individual, of the family and home, of enterprises, of any national community, of a people. And the sovereignty of a state!

We are told that the international (and especially European) trend is towards unification. Thus, is correct, but only after decades of freedom! The fight for sovereignty is not only going on in this country, but all over the Eastern Europe: in Slovakia, Croatia, Serbia. This is the repayment for the decades without freedom.

Such is the time and the country in which the coordinators and experts of the Congress are supposed to answer the questions put foward before them within the theme: "The USSR and countries of Eastern Europe on the way from totalitarianism to the rule of law". Did really nothing happen during the last six years? Probably the most important thing happened: a change in the public conscience. Just as you cannot stop a river with your hand, so nothing including the army, OMON, hunger and even war can stop the process of the creation of a new society, they can only make slower and bloody—what is really going on now. But they cannot throw the country back to total fear. It is clear to those who have the power in their hands. That is why it has become possible for us to meet each other in this hall on Andrey Dmitrievich's birthday.

Many of our guests took part in the social movement defending human rights and the world campaign "Sakharov Defence". We are sincerely grateful to them and their comrades in many countries for their support and defence of Sakharov in hard times. Due to their efforts, Sakharov was given freedom for the last three years of his life. Over these three years he taught many people in this country to differentiate some views from the truth and helped them to overcome fear, believe in themselves and in the human being, again.

Many of those present here were not acquainted with Sakharov personally, not all of them shared his views, very few of them were his friends. What unites us is the fact that we are his contemporaries. We are contemporaries of the man who became a legend during his life, but did not like myths about himself. We are contemporaries of the man whose fate drew the attention (kind or unkind) of many people throughout the world. The same attention exists now, but usually it is speculative. It makes me sorry that the speculations often come from people representing the democratic wing. Don't you call yourself Sakharov's friends if you only appeared after the telephone call by Mikhail Gorbachev to Gorkii. Don't make political capital so easily. I am ashamed for you before those who used to come to our home under the KGB observation, those who used to come to Gorkii secretly, and one who pawned his house in the USA in order to gain money for the campaign in defense of Sakharov.

People from different worlds are present here, representing different professions and social position, different parties and movements, different views. Many thanks to all those who have accepted our invitation and have come to this hall. I am grateful to the President of Portugal, Mario Soares. Under his sponsorship and with his participation the Fourth Sakharov hearings were held in Lisbon in 1983 and he was the first state leader who accepted my invitation at the very beginning of our activities for organization of the Congress. Thus, he let us hope that the event will be a success.

I thank the Chairman of the Czechoslovak National Assembly, Alexander Dubcek. 1968 was the start of countdown for those who are usually called dissidents. Seven people came to Red Square with the slogan "For Your and Our Freedom". And this was the beginning of the dissident glasnost in the USSR. All who took part in it saw their Czech and Slovak friends as an example of courage and staunchness. And I am happy to say here again in the presence of Pan Alexander "For Your and Our Freedom".

I thank the President of the USSR, Mikhail Gorbachev and the Chairman of Russian Republic Supreme Soviet, Boris Yeltsin. Their presence at this democratic meeting will undoubtedly support the success of our work, widening the circle of those who will become interested in and answer to the recommendations of the Congress, the working part of which is to begin tomorrow.

Exactly two years ago, a question put forward at the First Deputies' Congress was heard all over the country: "Who is Sakharov that he is allowed to speak?"

The Director of the Lebedev Physics Institute, Academician Leonid Keldysh and the Director of the Stanford Accelerator, Dr. Sidney Drell, Professor of the Cornell University Dr. Yury Orlov and the Chairman of Czechoslovak National Assembly, Alexander Dubcek, will take this floor after me. Each of them will give his own answer to the question: Who is Sakharov?

And then there will be the celebration: Andrey Dmitrievich's birthday. We will listen to our favorite musicians and friends: Svyatoslav Richter, Mstislav Rostropovich, Vladimir Spivakov and his virtuosos, and the Lithuanian Choir.

I hope that this celebration is in keeping with the lines by Zhukovskii:

"Don't speak sadly of those dear friends
Whose presence blessed our age.
They are now gone
But be thankful that they were here".

Thank you for your attention.

ADVANCE IN INTERNATIONAL HUMANITARIAN LAW

Mr. KENNEDY. Mr. President, one of the results of the refugee crisis in the Persian Gulf—perhaps the only silver lining to an otherwise enormous tragedy—was the broad humanitarian mandate granted to the United Nations in Iraq. It is a mandate which permits United Nations Humanitarian assistance and personnel to operate even without Iraqi Government cooperation.

These actions, authorized by two Security Council resolutions and in a memorandum of understanding with the Iraqi Government, could represent a significant advancement in international humanitarian law if they can be asserted in other situations and become an accepted principle of international law and practice.

In a thoughtful essay in the Washington Post, the Executive Delegate of the Secretary General, Prince Sadruddin Aga Khan, who is primarily in charge of the U.N. operation, reviews this new development in international humanitarian assistance.

I believe there are some extraordinarily important lessons to be drawn from the international community's recent experience in the Persian Gulf, especially with the Kurdish refugees, and Prince Sadruddin articulates them very well.

Mr. President, I commend his article to the attention of all my colleagues, and compliment Prince Sadruddin not only for a provocative essay but more importantly for an outstanding job in the field.

I ask that the text of the essay be printed at this point in the RECORD.

There being no objection, the essay was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 12, 1991]

U.N. PROTECTION BORN OF NECESSITY

(By Sadruddin Aga Khan)

On May 23 the United Nations secured Iraqi agreement to the deployment of up to 500 U.N. guards, to be assigned wherever a U.N. humanitarian presence is needed. This is not a pancea for the tensions and dangers of the region—and certainly not a means to "monitor all of Iraq," as Jim Hoagland writes [op-ed, June 5]. That was never the intention. But it is a small step for peace, a tentative but instructive idea of how innovation, even within the United Nations' somewhat rigid structures, can unblock the impasse.

The world's media spotlight—dazzlingly effective but lamentably brief—has focused on the grim plight of the Kurdish population in northern Iraq, which should not blind us to the needs of the victims of upheaval in other regions. Coalition forces responded first with a military efficiency that is enviable to traditional relief agencies. And since the signing of our framework agreement in Baghdad on April 18, the United Nations has had underway a humanitarian operation designed to bring succor to vulnerable groups throughout the country. The U.N. high commissioner for refugees has already taken over the Zakho transit camp. But security was hard to address within the confines of a humanitarian program.

Recourse to the Security Council was ruled out at the time. The peace-keeping option was tried to no avail. And indeed traditional U.N. peace-keeping, for all its successes, does have one pitfall: It can freeze a situation in an uneasy stalemate, with the underlying issues conveniently shelved by the parties—a

"hard and bitter peace," in the words of John F. Kennedy. Just look at the 33 years of dispute over Kashmir or the 27 years of Cyprus's division.

Another approach was needed. That was why we came up with the "Guards Contingent" formula, blending the disparate humanitarian, political and security elements. A novel if still unproven experiment, the guards' basic mandate is to protect the precious human and material assets deployed in the humanitarian operation. They are neither peace-keepers nor policemen where U.N. resources are not involved. There are no guarantees. But they are there to observe, monitor and report. Any security incidents will be rapidly communicated up the chain of command. In the most direct sense, the guards may be a highly visible but symbolic presence—as indeed are peace-keeping operations themselves, where the "blue helmets" protect more by their color than by their dimension. But the guards ensure the international context. They will bear moral witness and help create confidence. As the eyes and ears of the United Nations, their reports can trigger further action. Moreover, bound as they are to the humanitarian program's time frame, a cutoff date prevents the inertia of the situation in Kashmir or Cyprus.

On first sounding out the concepts in Baghdad, I recalled an earlier idea, which we put forward in a 1981 U.N. report on "Human Rights and Massive Exoduses"—for a corps of "humanitarian observers." These observers were to monitor situations and contribute through their presence to a de-escalation of tensions," as well as to facilitate humanitarian work. In a refugee context, they could contribute to speedy repatriation. Ahead of their time, they never materialized; however, a decade later the guards represent by another name much of that same philosophy.

The debate over a right of humanitarian intervention has been given a good airing recently. Compassion and self-interest find temporary common cause in international action to alleviate suffering that knows no frontiers. In a vacuum of authority, responsibility must be assumed, and services disrupted by disasters must be restored. Yet imposed concern remains largely unwelcome. Once again, innovation and flexibility are crucial. Life-saving and face-saving may have to go hand in hand.

Critics remind us that the United Nations enjoys no reputation for rapid response to crises: Its potential must indeed be better tapped. Nonetheless it may step in where other powers rightly hesitate to tread. The guards' deployment was risky and cannot shoulder a burden it was never intended to bear, but it deserves its niche in U.N. history. Whatever the outcome, we must not fear to improvise. When hundreds face death each day, as parents bury their children on barren mountaintops, we cannot await the ideal solution. Relief from starvation and disease brooks no bureaucracy.

Complex humanitarian and political challenges defy easy solution. There are no quick fixes: An idea such as the guards contingent for our operation in Iraq can only be part of a broader package. In such situations, where distrust, distress and violence feed upon each other in a poisonous circle, the antidote must have multiple ingredients. First, tensions must be lowered, with the parties agreeing to show some restraint and to support, at the very least, the implementation of the humanitarian program. Specific agreements to that effect should be concluded between all concerned. Second, civilian authority should prevail, reflecting the spirit if not the letter of a demilitarized region. Third, tentative or interim security arrangements might be ensured through a tripartite grouping of both sides together with international representatives associated with the humanitarian endeavor. Other assurances or leverage may come from outside. The tissue of confidence must be rewoven thread by thread. One missing strand, one unchecked incident, will unravel the safety net.

We cut some corners in sending in a first guards contingent before the ink was dry—in fact before the agreement was even signed. And as they had to be part of the humanitarian package, their funding is dependent upon voluntary contributions, in cash or in kind. So far the response has fallen short of the needs, estimated at some $35 million till the end of the year—about as much as it costs the coalition every week, according to press reports, to keep its forces in northern Iraq. Give us the means to make this operation a success. As the refugees return down our "blue routes," we must keep up the momentum. Peace comes cheaper than war; it is also a good investment. Solidarity today can reap stability in a volatile region tomorrow.

OTTO BOS

Mr. CRANSTON. Mr. President, the untimely death of Otto Bos, Gov. Pete Wilson's communications director, is a tragic loss not only to his family but to my State of California.

Only the rare staff member makes the substantive contributions to the public good that Otto made, during his years in San Diego and Sacramento, and in Washington—where he worked closely and on the most cooperative basis—with my staff.

Otto was a personable young man of extraordinary talent, ability, and dedication, with a future promise even greater than his past accomplishments.

I mourn his loss and grieve for his family.

AMBASSADOR JOSEPH VERNER REED'S COMMENCEMENT ADDRESS TO THE GRADUATING CLASS OF THE COLLEGE OF NATURAL RESOURCES AT UTAH STATE UNIVERSITY

Mr. HATCH. Mr. President, I feel that the speech by Ambassador Joseph Verner Reed to the graduating class of the College of Natural Resources at Utah State University in Logan, UT, my home State, should be placed in the RECORD at this point. It is an excellent speech and calls upon those young people to participate in public service in ways that only Ambassador Reed could articulate. Ambassador Reed has had such a tremendous experience working for our Government both here and abroad. He has had the privilege of working in the White House for a long time now, and I do not believe his efforts have ever been excelled.

This particular speech is a model for all commencement speeches and I believe is something that everybody in the country would enjoy reading. Therefore, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

COMMENCEMENT ADDRESS BY AMBASSADOR JOSEPH VERNER REED TO THE GRADUATING CLASS OF THE COLLEGE OF NATURAL RESOURCES

(Utah State University, Logan, UT, June 8, 1991)

"There is a debt of service due from every man to his country, proportioned to the bounty which nature and fortune have measured to him."—THOMAS JEFFERSON.

Thank you Dean Chapman for that very kind and generous introduction. I hope you don't mind if I call you some time to ask you to read it to my family. They'll never take my word for it!

President Cazier, Provost Morse, Dean Chapman, graduates of the class of 1991, ladies and gentlemen, it is an enormous pleasure to address you today.

It is also something of a challenge, for you and for me. For you, it is a test of endurance. Only in late spring in America do so many listen to so few about so little for so long. The hot air sweeps across the campuses like the Chergui across the deserts of Morocco.

As for me, there's the challenge of trying to deliver a message that the graduates will remember for the rest of their lives. But the foolishness—the absolute folly—of that idea came back to me when I sat back and tried to recall my own commencement and realized that not only did I not remember what was said, I didn't even remember who said it. So with the clear understanding that I am just the filler before the degrees, I can assure you I will be brief. First, let me congratulate the students on your graduation, your parents on their deliverance from tuition payments, your faculty for their infinite patience, and the administration for the magnificent ceremonies today.

I know how difficult it can be to make sure that everything runs smoothly. I recently had the responsibility of helping President Bush to arrange Queen Elizabeth's visit to this Nation, which meant tending to the myriad details of the multimoving parts of a ten day odyssey—from the arrival on the south lawn at the White House to the Orioles baseball game in Baltimore—from nonstop events in Federal City to the tours in Florida and then onto five cities in the Lone Star State. What an adventure! And you can imagine how I felt when I saw the photographs of the Queen making her speech on the White House lawn, or rather, when I saw the Queen's hat peeking above the sea of microphones, since that was the only part of her that was visible. It was dubbed "The Talking Hat." I therefore especially want to congratulate whoever arranged the podiums for this event. They have been exactly the right height. And we may have a job for him in Washington.

I also wish that we had scenery like this in Washington. I can understand what inspired so many of you to study the environment, when there is such incredible beauty to behold around this campus. The mountains have a way of putting human problems into perspective. Washington, D.C., on the other hand, was built on a swamp, and I don't think the country has ever gotten over that fact.

Long before I saw the beauty of this campus, I had a special affection for this university and for the College of Natural Resources. As the dean mentioned, I came to

know the work of the college when I was Ambassador to Morocco. The record of fruitful cooperation between Morocco and Utah State University was extraordinary. The projects were in Rabat and in El Jadida. My loyalty to your school was won on the spot. I send President Cazier and the delegation from USU many good wishes for their forthcoming visit to the kingdom.

And I have a special admiration for this graduating class. For you have chosen to be at the cutting edge. This is the dawn of a new decade, the decade of the environment. During these next ten years, we must grapple with some of the most complex issues facing our Nation—indeed, our world—from global warming and acid rain to water shortages and toxic waste.

And while we are all custodians of the environment, you are the ones who hold the keys. You are the ones, equipped with the knowledge you have gained at this great college, who can balance the need to produce more from our land, while protecting and preserving our environment.

So I would urge you to put your talents to work in public service. You will not only be helping to solve some very specific and pressing problems. You will also be doing something just as important, which is rebuilding confidence in the government itself.

Americans have always been skeptical—and rightly so—of government authority. But over the past several years, they have come to doubt government's ability. And that, I think, is tragic.

In 1989, the National Commission on Public Service found that we had a "quiet crisis" in government.

The Commission, headed by the former Chairman of the Federal Reserve, Paul Volcker, included 35 prominent and experienced Americans. They came from every political stripe from former President Gerald Ford to former Senator Ed Muskie, but they all agreed that we face a grave situation that threatens the very heart of our democracy.

They found that the best people were leaving government. The brightest young people were not joining. And that we as a nation will be unable to confront the difficult challenges of the years ahead, unless we first rebuild the public service and restore confidence in government.

Let me give you just one example of this quiet crisis.

Last year, you may recall, there were environmental initiatives on ballots in States across the Nation. There were twenty-eight initiatives in California alone.

But even though 94% of the American people told the pollsters that the environment is an important issue, and even though 64% said they believe they should personally do more to help, those same people went to the polls to defeat virtually every one of those initiatives in California, New York, Missouri, and Oregon.

Why? In part, because some of the proposals were bad ideas.

Some were too expensive.

Others were just too confused and confusing.

But I think there was a deeper reason. People did not have the confidence that government could solve the problem. They did not trust government to spend the money wisely to clean up the environment.

Having spent time both in and out of public service, I think I can understand people's disillusionment with government. In the 1960's and 70's, we were told that more government was the answer. And yet we found that government programs could not spend people out of poverty.

In the 1980's, we heard that less government was the answer. And yet as the failing saving and loans testify, that is not always the case.

All along, I think that the people of this country have known that the answer is not necessarily more government, or less government, but better government.

And I would submit to you that as we approach the next century, we need the best possible government for this Nation.

Under President George Bush's leadership, that is exactly what we have sought to achieve. The President has not let the Volcker Commission report sit on a shelf, but has taken it to heart. The President has worked to restore competence and rebuild confidence in government.

The Volcker Commission said that we must attract more college graduates to government. And we have gone to the campuses to recruit students with the Career America Program.

They said that we should adjust the pay of government workers and, as unpopular as it was, the President has signed legislation to bring about parity with the private sector over the next ten years. I have no reservations about saying that was the right thing to do. It is a wise investment and a good value for our country.

The Commission recommended that we must do more to encourage volunteerism. George Bush, more than any President before him, has encouraged Americans to light the way toward the future by offering their time to help others.

And most importantly, the Commission said government must prove, through its own performance, that it deserves public support.

I believe the American Government has begun to regain the confidence of the American people. In the gulf war, we saw that our Government works. We saw a military establishment that produced state of the art equipment that worked, and orchestrated the greatest airlift in the history of the world; we saw the patient diplomacy of the President at the White House, the diplomats at the State Department and a tireless Secretary James Baker work in building an unprecedented coalition of nations on the side of freedom; we witnessed the skillful use of the parliament of man, the United Nations, which was employed exactly as it was intended by the signers of the charter in San Francisco, and we stood in awe and admiration of the 500,000 brave American men and women who brought freedom and peace to the Persian Gulf. We saw that our way of government is still the greatest institution on the face of this Earth.

Yet with all the progress we have made, we have a long way to go to make our Government as good as it can be. We need the youth and energy of the class of 1991 to revitalize our public service.

We need your thoughts on how to solve our environmental problems at a price we can afford. We need your experience in searching for the best, and not just the easiest answers. We need your commitment to make our government more effective and responsible.

So I would ask you, in this hour of our Nation's need, to answer the call to public service. As graduates of this distinguished college, you have the training, the knowledge, and all that it takes to make a difference.

For those graduates who are still trying to figure out what to do with your lives, I can tell you that you will find no more satisying career than public service.

For those of you who decide upon government, I would ask that you think of it not as just another job, but as answering to the higher purpose of serving this Nation.

And for all of us, young and old, I think that public service is part of our obligation as Americans. We who have been given so much, the blessings of which we celebrate today, have a sacred duty to contribute to the success and direction of this free society.

As President Bush said in his inaugural address:

"We are not the sum of our possessions. They are not the measure of our lives. In our hearts we know what matters. We cannot hope only to leave our children a bigger car, a bigger bank account. We must hope to give them a sense of what it means to be a loyal friend, a loving parent, a citizen who leaves his home, his neighborhood, and (his nation) better than he found it."

And now I stand here before you as the final obstacle to your graduation. So let me thank you for listening, for the honorary degree you have bestowed, and for the honor of addressing you. And one piece of advice. . .

Class of '91

Chase your dreams!

And let me leave you with the only expression I know that means hello, goodbye, hope to see you again and good luck:

Aloha!

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,279th day that Terry Anderson has been held captive in Lebanon.

Today also marks the 2,195th day for Thomas Sutherland. On Sunday, Mr. Sutherland's family and friends gathered to commemorate this sixth anniversary as a hostage in Lebanon. His wife, Jean, remarked, "For us, June 9 is the time when we feel the support of all our friends, all over the world." I would note that the Sutherland family has my support. And my prayers for the swift return of their husband and father.

Mr. President, I ask unanimous consent that an Associated Press report regarding this significant day be included in the RECORD at this time.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

FAMILY COMMEMORATES SUTHERLAND'S SIXTH YEAR IN CAPTIVITY

FORT COLLINS.—Friends and family of Thomas Sutherland, who will mark his sixth year in captivity Sunday, planned to observe the anniversary with a picnic and talking only of the hope that Sutherland will soon be released.

"When we remember him, we don't look back at all the time it has been," said Sutherland's daughter Kit, 31, who lives in Fort Collins, "We would rather look at the short time it will probably be (until his release)."

Sunday marks Sutherland's sixth year as a hostage 2,192 days. He is one of 13 Westerners, including six Americans, who are missing. Most are believed held hostage in Lebanon by pro-Iranian factions. Iran has said it cannot compel those groups to free the hostages, but has also said it would use its influence to encourage a release.

The longest-held is Terry Anderson, chief Middle East correspondent for The Associ-

ated Press. He was abducted in Beirut on March 16, 1985.

Sutherland, 60, was on leave from Colorado State Unversity when he was abducted in June 1985. He was in Beirut working as the dean of agriculture at American Unversity.

"We must not forget that Tom continues to suffer as a hostage,' said Frank Vattano, CSU psychology professor and Sutherland's friend. "the picnic is a quiet way to remember and recall how long he's been kept from enjoying he everyday pleasures many of us take for granted."

Last week, volunteers decked Fort Collins' main street, College Avenue, with yellow ribbons from one end of town to the other. Trees on the CSU campus were also trimmed with yellow ribbons.

"It can't last," said Jim Johnson, a CSU professor and longtime friend to the Sutherlands. "We made a pledge not to let people forget about it.* * * But this has certainly got to be the last."

Sutherland's wife, Jean, also expressed hope of a imminent release.

"This year we don't want to focus on the captivity the way we always did," she said. "This year, we're looking forward toward the day we can commemorate the day of the release. It feels more positive.

"For us, June 9 is the time when we feel the support of all our friends, all over the world," she said Friday at her home on the campus of the American University of Beirut. "Their support has been tremendous."

The Sutherland family also released a universal message to commemorate Sutherland's captivity. The family's message said, "We give our love to you for the love you have given to us. We offer our commitment to you for the commitment you have offered to us. We find our strength in you for the strength you have found in us. Together may we share at this time ever renewed faith and hope for peace."

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to Executive Session to consider the following nomination:

Calendar 180, Preston Moore, to be Chief Financial Officer, Department of Commerce.

I further ask unanimous consent that the nominee be confirmed, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF COMMERCE

Preston Moore, of Texas, to be Chief Financial Officer, Department of Commerce.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to the consideration of legislative business.

COMPREHENSIVE URANIUM ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 95, S. 210, regarding uranium enrichment.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 210) to establish the United States Enrichment Corporation to operate the Federal uranium enrichment program on a profitable and efficient basis in order to maximize the long term economic value to the United States, to provide assistance to the domestic uranium industry and to provide a Federal contribution for reclamation of mill tailing generated pursuant to Federal defense contracts at active uranium and thorium processing sites.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 210

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Comprehensive Uranium Act of 1991".

TITLE I

SEC. 110. SHORT TITLE.—This title may be cited as the "Uranium Enrichment Act of 1991.".

SEC. 111. DELETION OF SECTION 161 v.—Subsection 161 v. of the Atomic Energy Act of 1954, as amended, is deleted and the remaining subsections are relettered accordingly.

SEC. 112. REDIRECTION OF THE URANIUM ENRICHMENT ENTERPRISE OF THE UNITED STATES.—The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011–2296) is further amended by—

a. inserting at the commencement thereof after the words "ATOMIC ENERGY ACT OF 1954":

"TITLE I—ATOMIC ENERGY";

and

b. adding at the end thereof the following:

"TITLE II—UNITED STATES ENRICHMENT CORPORATION

"CHAPTER 21. FINDINGS

"SEC. 1101. FINDINGS.—The Congress of the United States finds that:

"a. The enrichment of uranium is essential to the national security and energy security of the United States.

"b. A competitive, well-managed and efficient enrichment enterprse provides important economic benefits to the United States and contributes to a highly favorable foreign trade balance.

"c. A strong United States enrichment enterprise promotes United States nonproliferation policies by requiring accountability for United States enriched uranium.

"d. The operation of uranium enrichment facilities must meet high standards for environmental health and safety.

"e. The operation and management of a uranium enrichment enterprise requires a commercial business orientation in order to engender customer support and confidence, and customers, rather than the taxpayers at large, should bear the costs of commercial uranium enrichment services.

"f. The optimal level of expenditures for the uranium enrichment enterprise fluctuates and cannot be accurately predicted or efficiently financed if subject to annual authorization and appropriation.

"g. Flexibility is essential to adapt business operations to a competitive marketplace.

"h. The events of the recent past, including the emergence of foreign competition, have brought new and unforeseen forces to bear upon the management and operation of the Government's uranium enrichment enterprise.

"i. The present operation of the uranium enrichment enterprise must be changed so as to further the national interest in the enterprise and respond to the competitive demand placed upon it by market forces, while continuing to meet the paramount objective of ensuring the Nation's common defense and security.

"CHAPTER 22. DEFINITIONS, ESTABLISHMENT OF CORPORATION AND PURPOSES

"SEC. 1201. DEFINITIONS.—For the purpose of this title:

"a. The term 'Secretary' means the Secretary of Energy.

"b. The term 'Department' means the Department of Energy of the United States.

"c. The term 'Administrator' means the chief executive officer of the United States Enrichment Corporation.

"d. The term 'Corporation' means the United States Enrichment Corporation.

"e. The term 'Corporate Board' means the appointed members of the official advisory panel appointed by the President pursuant to section 1503 of this title.

"f. The term 'uranium enrichment' means the separation of uranium of a given isotopic content into two components, one having a higher percentage of a fissile isotope and one having a lower percentage.

"g. The term 'remedial action' has the same meaning as defined in section 120(24) of the Comprehensive Environmental Response, Compensation and Liability Act.

"h. The term 'decontamination and decommissioning' means those activities undertaken to decontaminate and decommission inactive facilities that have residual radioactive or mixed radioactive and hazardous chemical contamination.

"SEC. 1202. ESTABLISHMENT OF THE CORPORATION.—

"a. There is hereby created a body corporate to be known as the 'United States Enrichment Corporation'.

"b. The Corporation shall—

"(1) be established as a wholly owned Government corporation subject to the Government Corporation Control Act, as amended (31 U.S.C. 9101–9109), except as otherwise provided herein; and

"(2) be an agency and instrumentality of the United States.

"SEC. 1203. PURPOSES.—The Corporation is created for the following purposes—

"[(1)] *a.* to acquire feed material for uranium enrichment, enriched uranium, the Department's uranium previously set aside for commercial purposes, and the Department's uranium enrichment and related facilities;

"[(2)] *b.* to operate, and as required by business conditions, to expand or construct facilities for uranium enrichment or both;

"[(3)] *c.* to market and sell enriched uranium and uranium enrichment and related services to—

"[(A)] *(1)* the Department for governmental purposes; and

"[(B)] *(2)* qualified domestic and foreign persons;

"[(4)] *d.* to conduct research and development as required to meet corporate objectives for the purpose of identifying, evaluating, improving and testing processes for uranium enrichment;

"[(5)] *e.* to operate, as a commercial enterprise, on a profitable and efficient basis; in order to maximize the long-term economic value of the Corporation to the United States Government including the payment of dividends to the Treasury as a return on the United States Government investment;

"[(6)] *f.* to conduct the business as a self-financing corporation and eliminate the need for appropriations or other sources of Government financing after enactment of this title;

"[(7)] *g.* to maintain a reliable and economical domestic source of enrichment services;

"[(8)] *h.* to conduct its activities in a manner consistent with the health and safety of the public;

"[(9)] *i.* to continue to meet the paramount objectives of ensuring the Nation's common defense and security (including consideration of United States policies concerning nonproliferation of atomic weapons and other nonpeaceful uses of atomic energy); and

"[(10)] *j.* to take all other lawful action in furtherance of the foregoing purposes.

"CHAPTER 23. CORPORATE OFFICES

"SEC. 1301. CORPORATE OFFICES.—The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

"CHAPTER 24. POWERS AND DUTIES OF THE CORPORATION

"SEC. 1401. SPECIFIC CORPORATE POWERS AND DUTIES.—The Corporation—

"a. shall perform uranium enrichment or provide for uranium to be enriched by others at facilities of the Corporation; contracts in existence as of the date of enactment of this title between the Department and persons under contract to perform uranium enrichment and related services at facilities of the Department shall continue in effect as if the Corporation, rather than the Department, had executed these contracts;

"b. shall conduct, or provide for the conduct of, research and development activities related to the isotopic separation of uranium as the Corporation deems necessary or advisable for purposes of maintaining the Corporation as a continuing, commercial enterprise operating on a profitable and efficient basis;

"c. may acquire or distribute enriched uranium, feed material for uranium enrichment or depleted uranium in transactions with—

"(1) persons licensed under sections 53, 63, 103, or 104 of title I in accordance with the licenses held by such persons;

"(2) persons in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I; or

"(3) as otherwise authorized by law;

"d. may—

"(1) enter into contracts with persons licensed under section 53, 63, 103, or 104 of title I for such periods of time as the Corporation may deem necessary or desirable, to provide uranium or uranium enrichment and related services; and

"(2) enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I or as otherwise authorized by law;

"e. shall sell to the Department as provided in this title, and without regard to section 57 e. of title I or the provisions of section 1535 of title 31, United States Code, such amounts of uranium or uranium enrichment and related services as the Department may determine from time to time are required: (1) for the Department to carry out Presidential direction and authorizations pursuant to section 91 of title I; and (2) for the conduct of other Department programs;

"f. may grant licenses, both exclusive and nonexclusive, for the use of patent and patent applications owned by the Corporation, and establish and collect charges, in the form of royalties or otherwise, for utilization of Corporation-owned facilities, equipment, patents, and technical information of a proprietary nature pertaining to the Corporation's activities.

"SEC. 1402. GENERAL POWERS OF THE CORPORATION.—In order to accomplish the purposes of this title, the Corporation—

"a. shall have perpetual succession unless dissolved by Act of Congress;

"b. may adopt, alter, and use a corporate seal, which shall be judicially noticed;

"c. may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

"d. may indemnify the Administrator, officers, attorneys, agents and employees of the Corporation for liabilities and expenses incurred in connection with their corporate activities;

"e. may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the power granted to it by law may be exercised and enjoyed;

"f. (1) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it deems necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and personal property, as it deems necessary to effectuate the purposes of this title and without regard to the Federal Property and the Administrative Services Act of 1949, as amended;

"(2) Purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, made by the Corporation shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Corporation shall determine to be adequate to insure notice and an opportunity for competition; *Provided,* That advertising shall not be required when the Corporation determines that the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this title, or that advertising is not reasonably practicable;

"g. with the consent of the agency or Government concerned, may utilize or employ the services or personnel of any Federal Government agency, or any State or local government, or voluntary or uncompensated personnel to perform such functions on its behalf as may appear desirable;

"h. may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

"i. may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and other provisions of law specifically applicable to wholly owned Government corporations;

"j. notwithstanding any other provision of law, and without need for further appropriation, may use moneys, unexpended appropriations, revenues and receipts from operations, amounts received from obligations issued and other assets of the Corporation in accordance with section 1505, without fiscal year limitation, for the payment of expenses and other obligations incurred by the Corporation in carrying out its functions under, and within the requirements of, this title; and shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code;

"k. may settle and adjust claims held by the Corporation against other persons or parties and claims by other persons or parties against the Corporation;

"l. may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the Corporation;

"m. shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

"n. may define appropriate information as 'Government Commercial Information' and exempt such information from mandatory release pursuant to section 552(b)(3) of title 5, United States Code, when it is determined by the Administrator that such information if publicly released would harm the Corporation's legitimate commercial interests or those of a third party;

"o. may request, and the Administrator of General Services, when requested, shall furnish the Corporation such services as he is authorized to provide agencies of the United States;

"p. may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes herein authorized;

"q. may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

"r. shall pay any settlement or judgment entered against it from the Corporation's own funds and not from the judgment fund (31 U.S.C. 1304). The provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671 et seq.) shall not apply to any claims arising from the activities of the Corporation after the effective date of this statute; *Provided,* That, this subsection shall not apply to liability or claims arising from a nuclear incident, if such incident occurs prior to the licensing of the Corporation's existing Gaseous Diffusion Facilities under Section 1601 of this title.

"SEC. 1403. CONTINUATION OF CONTRACTS, ORDERS, PROCEEDINGS AND REGULATIONS.—

"a. Except as provided elsewhere in this title, all contracts, agreements, and leases with the Department, and licenses, and privileges that have been afforded to the Department prior to the date of the enactment of this title and that relate to uranium enrichment, including all enrichment services contracts, power purchase contracts and the December 18, 1987 Settlement Agreement with the Tennessee Valley Authority regarding payment of capacity charges under the Department's two power contracts with the Tennessee Valley Authority, shall continue in effect as if the Corporation had executed such contracts, agreements, or leases or had been afforded such licenses and privileges.

"b. As related to the functions vested in the Corporation by this title, all orders, determinations, rules, regulations and privileges of the Department shall continue in effect and remain applicable to the Corporation until modified, terminated, superseded, set aside or revoked by the Corporation, by any court of competent jurisdiction, or by operation of law unless otherwise specifically provided in this title.

"c. Except as provided [elsewhere in this title,] *in section 1404*, the transfer of functions related to and vested in the Corporation by this title shall not affect proceedings judicial or otherwise, relating to such functions which are pending at the time this title takes effect, and such proceedings shall be continued with the Corporation, as appropriate.

"SEC. 1404. LIABILITIES.—Except as provided elsewhere in this title, all liabilities attributable to operation of the uranium enrichment enterprise prior to the date of the enactment of this title shall remain direct liabilities of the Government of the United States; with regard to any claim seeking to impose such liability, section 1403 shall not be applicable and the United States shall be represented by the Department of Justice.

"CHAPTER 25. ORGANIZATION, FINANCE AND MANAGEMENT

"SEC. 1501. ADMINISTRATOR.—

"a. The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation. The Administrator shall be a person who, by reason of professional background and experience is specially qualified to manage the Corporation; *Provided, however*, That upon enactment of this title, the President shall appoint an existing officer or employee of the United States to act as Administrator until the office is filled.

"b. The Administrator—

"(1) shall be the chief executive officer of the Corporation and shall be responsible for the management and direction of the Corporation. The Administrator shall establish the offices, appoint the officers and employees of the Corporation (including attorneys), and define their responsibilities and duties. The Administrator shall appoint other officers and employees as may be required to conduct the Corporation's business;

"(2) shall serve a term of six years but may be reappointed;

"(3) shall, before taking office, take an oath to faithfully discharge the duties thereof;

"(4) shall have compensation determined by the President based upon the recommendation of the Secretary and the Corporate Board as provided in section 1503[(c)]*d*, except that in the absence of such determination compensation shall be set at Executive Level I, as prescribed in section 5312 of title 5, U.S.C.;

"(5) shall be a citizen of the United States;

"(6) shall designate an officer of the Corporation who shall be vested with the authority to act in the capacity of the Administrator in the event of absence or incapacity; and

"(7) may be removed from office only by the President and only for neglect of duty or malfeasance in office. The President shall communicate the reasons for any such removal to both Houses of Congress at least 30 days prior to the effective date of such removal.

"c. (1) The Secretary shall exercise general supervision over the Administrator only with respect to the activities of the Corporation involving—

"(A) the Nation's common defense and security; and

"(B) health, safety and the environment.

"(2) The Administrator shall be solely responsible for the exercise of all powers and responsibilities that are committed to the Administrator under this title and that are not reserved to the Secretary under paragraph (1), and, notwithstanding the provisions of section 9104(a)(4) of title 31, U.S.C., including the setting of the appropriate amount of, and paying, any dividend under section 1506(c) and all other fiscal matters.

"SEC. 1502. DELEGATION.—The Administrator may delegate to other officers or employees powers and duties assigned to the Corporation in order to achieve the purposes of this title.

"SEC. 1503. CORPORATE BOARD.—

"*a*. There is hereby established a Corporate Board appointed by the President which shall consist of five members, one of whom shall be designated as chairman. Members of the Corporate Board shall be individuals possessing high integrity, demonstrated accomplishment and broad experience in management and shall have strong backgrounds in science, engineering, business or finance. At least one member of the Corporate Board shall be, or previously have been, employed on a full-time basis in managing an electric utility[:].

"[a.] *b*. (1) The specific responsibilities of the Corporate Board shall be to:

"(A) review the Corporation's policies and performance and advise the Administrator and the Secretary on these matters; and

"(B) advise the Administrator and the Secretary on any other such matters concerning the Corporation as may be referred to the Corporate Board.

"(2) The Board shall have the right to recommend removal of the Administrator. In the event such recommendation is made, it shall be transmitted to the President by the Secretary, together with the Secretary's own recommendation on removal of the Administrator.

"[b.] *c*. Members of the Board shall be provided access to all significant reports, memoranda, or other written communications generated or received by the Corporation. At the request of the Board, the Corporation shall make available to the Board all financial records, reports, files, papers and memoranda of, or in use by, the Corporation.

"[(c).] *d*. When appropriate, the Corporate Board may make recommendations to the Secretary concerning the compensation to be received by the Administrator and the ten officers of the Corporation who may receive compensation in excess of Executive Level II as provided in section 1504[(a)]*b*. The Secretary shall transmit such recommendations to the President together with the Secretary's own recommendations concerning compensation. In the event that less than three members of the Corporate Board are in office, recommendations concerning compensation may be made by the Secretary alone. The President shall have the power to enter into binding agreements concerning compensation to be received by the Administrator during his term of office and by the ten officers described in section 1504[(a)]*b*. during their term of employment, regardless of any recommendation received or not received under this title.

"[d.] *e*. Except for initial appointments, members of the Corporate Board shall serve five-year terms. Each member of the Corporate Board shall be a citizen of the United States. No more than three members of the Board shall be members of any one political party. Of those first appointed, the chairman shall serve for the full five-year term; one member shall serve for a term of four years; one shall serve for a term of three years; one shall serve for a term of two years; and one shall serve for a term of one year.

"[e.] *f*. Upon expiration of the initial term, such Corporate Board member appointed thereafter shall serve a term of five years. Upon the occurrence of a vacancy on the Board, the President shall appoint an individual to fill such vacancy for the remainder of the applicable term. Upon expiration of a term, a Board member may continue to serve up to a maximum of one year or until a successor shall have been appointed and assumed office, whichever occurs first.

"[f.] *g*. The members of the Corporate Board in executing their duties shall be governed by the laws and regulations regarding conflicts of interest, but exempted from other provisions and authority prescribed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

"[g.] *h*. The Corporate Board shall meet at any time pursuant to the call of the Chairman and as provided by the bylaws of the Corporation, but not less than quarterly. The Administrator or his representative shall attend all meetings of the Corporate Board.

"[h.] *i*. The Corporation shall compensate members of the Corporate Board at a per diem rate equivalent to Executive Level III, as defined in 5 U.S.C. 5314, in addition to reimbursement of reasonable expenses incurred when engaged in the performance of duties vested in the Corporate Board. Any Corporate Board member who is otherwise a Federal employee shall not be eligible for compensation above reimbursement for reasonable expenses incurred while attending official meetings of the Corporation.

"[i.] *j*. (1) The Corporate Board shall report at least annually to the Administrator on the performance of the Corporation and the issues that, in the opinion of the Board, require the attention of the Administrator. Any such report shall include such recommendations as the Board finds appropriate. A copy of any report under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate and to the Speaker of the House of Representatives.

"(2) Within ninety days after the receipt of any report under this subsection the Administrator shall respond in writing to such report and provide an analysis of such recommendations of the Board contained in the report. Such responses shall include plans for implementation of each recommendation or a justification for not implementing such recommendation. A copy of any response

under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources and to the Speaker of the House of Representatives.

"SEC. 1504. EMPLOYEES OF THE CORPORATION.—

"*a.* Officers and employees of the Corporation shall be officers and employees of the United States[:].

"[a.] *b.* The Administrator shall appoint all officers, employees and agents of the Corporation as are deemed necessary to effect the provisions of this title without regard to any administratively imposed limits on personnel, and any such officer, employee or agent shall only be subject to the supervision of the Administrator. The Administrator shall fix all compensation in accordance with the comparable pay provisions of section 5301 of title 5, United States Code, with compensation levels not to exceed Executive Level II, as defined in section 5313 of title 5, United States Code: *Provided,* That the Administrator may, upon recommendation by the Secretary and the Corporate Board as provided in section 1503[(c)]*d.* and approval by the President, appoint up to ten officers whose compensation shall not exceed an amount which is 20 per centum less than the compensation received by the Administrator, but not less than Executive Level II. The Administrator shall define the duties of all officers and employees and provide a system of organization inclusive of a personnel management system to fix responsibilities and promote efficiency. The Corporation shall assure that the personnel function and organization is consistent with the principles of section 2301(b) of title 5, United States Code, relating to merit system principles. Officers and employees of the Corporation shall be appointed, promoted and assigned on the basis of merit and fitness, and other personnel actions shall be consistent with the principles of fairness and due process but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service.

"[b.] *c.* Any Federal employee hired before January 1, 1984, who transfers to the Corporation and who on the day before the date of transfer is subject to the Federal Civil Service Retirement System (subchapter III of chapter 83 of title 5, United States Code) shall remain within the coverage of such system unless he or she elects to be subject to the Federal Employees' Retirement System. For those employees remaining in the Federal Civil Service Retirement System, the Corporation shall withhold pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in chapter 83 of title 5, United States Code. Employment by the Corporation without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. Any employee of the Corporation who is not within the coverage of the Federal Civil Service Retirement System shall be subject to the Federal Employees' Retirement System (chapter 84 of title 5, United States Code). The Corporation shall withhold pay and make such payments as are required under that retirement system. Further:

"(1) Any employee who transfers to the Corporation under this section shall not be entitled to lump sum payments for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Corporation with the unused annual leave at the time of transfer.

"(2) An employee who does not transfer to the Corporation and who does not otherwise remain a Federal employee shall be entitled to all the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Corporation of work substantially similar to that performed by the employee for the Department.

"[c.] *d.* This section does not affect a right or remedy of an officer, employee, or applicant for employment under a law prohibiting discrimination in employment in the Government on the basis of race, color, religion, age, sex, national origin, political affiliation, martial status, or handicap conditions.

"[d.] *e.* Officers and employees of the Corporation shall be covered by chapter 73 of title 5, United States Code, relating to suitability, security and conduct.

"[e.] *f.* Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the Department or the executive branch of the Government of the United States shall continue to apply to officers and employees who transfer to the Corporation from other Federal employment until changed by the Corporation in accordance with the provisions of this title.

"[f.] *g.* The provisions of sections 3323(a) and 8344 of title 5, United States Code, or any other law prohibiting or limiting the reemployment of retired officers or employees or the simultaneous receipt of compensation and retired pay or annuities, shall not apply to officers and employees of the Corporation who have retired from or ceased previous government service prior to April 28, 1987.

"SEC. 1505. TRANSFER OF PROPERTY TO THE CORPORATION.—[In order to enable the Corporation to exercise the powers and duties vested in it by this title:]

"a. The Secretary, as requested by the Administrator, is authorized and directed to transfer without charge to the Corporation all of the Department's right, title, or interest in and to, real or personal properties owned by the Department, or by the United States but under control or custody of the Department, which are related to and materially useful in the performance of the functions transferred by this title, including but not limited to the following—

"(1) production facilities for uranium enrichment inclusive of real estate, buildings and other improvements at production sites and their related and supporting equipment: *Provided,* That facilities, real estate, improvements and equipment related to the Oak Ridge Gaseous Diffusion Plant in Oak Ridge, Tennessee, and to the gas centrifuge enrichment program shall not transfer under this paragraph except for diffusion cascades and related equipment needed by the Corporation for replacement parts: *Provided further,* That any enrichment facilities retained by the Department shall not be used to enrich uranium in competition with the Corporation. This paragraph shall not prejudice consideration of any site as a candidate site for future expansion or replacement of uranium enrichment capacity;

"(2) at such time subsequent to the year 2000 as the Secretary determines that the Oak Ridge Gaseous Diffusion Plant should be decommissioned or decontaminated, or both, the Secretary shall convey without charge equipment and facilities relating to the Oak Ridge Gaseous Diffusion Plant not transferred in paragraph (1) to the Corporation;

"(3) facilities, equipment, and materials for research and development activities related to the isotopic separation of uranium by the gaseous diffusion technology;

"(4) the Department's stocks of preproduced enriched uranium, but excluding stocks of highly enriched uranium: *Provided,* That approximately two metric tons of the Department's highly enriched uranium shall be loaned to the Corporation as required for working inventory;

"(5) the Department's stocks of feed materials for uranium enrichment except for the quantities allocated to the national defense activities of the Department as of the date of enactment;

"(A) the Department's stockpile of enrichment tails existing as of the date of enactment, shall remain with the Department; and

"(B) stocks of feed materials which remain the property of the Department under paragraph (5) shall remain in place at the enrichment plant sites. The Corporation shall have access to and use of these feed materials provided such quantities as are used are replaced, or credit given, if use by the Department is subsequently needed.

"(6) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases to the extent these items concern the Corporation's functions and activities, except those items required for programs and activities of the Department and those items specifically excluded by this subsection.

The transfer authorized by this section is not subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act.

"b. The Secretary is authorized and directed to grant to the Corporation without charge the Department's rights and access to the Atomic Vapor Laser Isotope Separation, hereinafter referred to as 'AVLIS', technology and to provide on a reimbursable basis and at the request of the Corporation, the necessary cooperation and support of the Department to assure the commercial development and deployment of AVLIS or other technologies in a manner consistent with the intent of this title.

"c. The Secretary is authorized and directed to grant the Corporation without charge, to the extent necessary or appropriate for the conduct of the Corporation's activities, licenses to practice or have practiced any inventions or discoveries (whether patented or unpatented) together with the right to use or have used any processes and technical information owned or controlled by the Department.

"d. The Secretary is directed, without need of further appropriation, to transfer to the Corporation the unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable), and accounts receivable which are related to functions and activities acquired by the Corporation from the Department pursuant to this title, including all advance payments.

"e. The President is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real and personal property of the United States which is reasonably related to the functions performed by the Corporation. Such transfers may be made by the President without charge as he may from time to time deem necessary and proper for achieving the purposes of this title.

"f. Title to depleted uranium resulting from the enrichment services provided to the

Department by the Corporation shall remain with the Department.

"SEC. 1506. CAPITAL STRUCTURE OF THE CORPORATION[:].—

"a. Upon commencement of operations of the Corporation, all liabilities then chargeable to unexpended balances of appropriations transferred under section 1505 shall become liabilities of the Corporation.

"b. (1) The Corporation shall issue capital stock representing an equity investment equal to the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1987, modified to reflect continued depreciation and other usual changes that occur up to the date of transfer. The Secretary of the Treasury shall hold such stock for the United States: *Provided*, That all rights and duties pertaining to management of the Corporation shall remain vested in the Administrator as specified in section 1501.

"(2) The capital stock of the Corporation shall not be sold, transferred, or conveyed by the United States unless such disposition is specifically authorized by Federal law enacted after enactment of this title.

"c. The Corporation shall pay into miscellaneous receipts of the Treasury of the United States or such other fund as provided by law, dividends on the capital stock, out of earnings of the Corporation, as a return on the investment represented by such stock. The Corporation shall pay such dividends out of earnings, unless there is an overriding need to retain these funds in furtherance of other corporate functions including but not limited to research and development, capital investments and establishment of cash reserves.

"d. The Corporation shall repay within a twenty-year period the amount of $364,000,000 into miscellaneous receipts of the Treasury of the United States, or such other fund as provided by law with interest on the unpaid balance from the date of enactment of this title at a rate equal to the average yield on twenty-year Government obligations as determined by the Secretary of the Treasury on the date of enactment of this title. The money required to be repaid under this subsection is hereinafter referred to as the 'Initial Debt'.

"e. Receipt by the United States of the stock issued by the Corporation (including all rights appurtenant thereto) together with repayment of the Initial Debt shall constitute the sole recovery by the United States of previously unrecovered costs that have been incurred by the United States for uranium enrichment activities prior to enactment of this title.

"SEC. 1507. BORROWING[:].—

"a. (1) The Corporation is authorized to issue and sell bonds, notes, and other evidences of indebtedness (hereinafter collectively referred to as 'bonds') in an amount not exceeding $2,500,000,000 outstanding at any one time to assist in financing its activities and to refund such bonds. The principal of and interest on said bonds shall be payable from revenues of the Corporation.

"(2) Notwithstanding any other provision of law, the Corporation may pledge and use its revenues for payment of the principal of and interest on said bonds, for purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve funds and other funds which may be similarly pledged and used, to such extent and in such manner as it may deem necessary or desirable.

"(3) Notwithstanding any other provision of law, the Corporation is authorized to enter into binding covenants with the holders of said bonds—and with the trustee, if any—under any indenture, resolution, or other agreement entered into in connection with the issuance thereof with respect to the establishment of reserve funds and other funds, stipulations concerning the subsequent issuance of bonds, and such other matters, not inconsistent with this title, as the Corporation may deem necessary or desirable to enhance the marketability of said bonds.

"(4) Bonds issued by the Corporation hereunder shall not be obligations of, nor shall payments of the principal thereof or interest thereon be guaranteed by, the United States.

"b. Bonds issued by the Corporation under this section shall be negotiable instruments unless otherwise specified therein, shall be in such forms and denominations, shall be sold at such times and in such amounts, shall mature at such time or times not more than thirty years from their respective dates, shall be sold at such prices, shall bear such rates of interest, may be redeemable before maturity at the option of the Corporation in such manner and at such times and redemption premiums, may be entitled to such priorities of claim on the Corporation's revenues with respect to principal and interest payments, and shall be subject to such other terms and conditions, as the Corporation may determine: *Provided*, That at least fifteen days before selling each issue of bonds hereunder (exclusive of any commitment shorter than one year) the Corporation shall advise the Secretary of the Treasury as to the amount, proposed date of sale, maturities, terms and conditions and expected rates of interest of the proposed issue in the fullest detail possible. The Corporation shall not be subject to the provisions of section 9108 of title 31, United States Code. The Corporation shall be deemed part of an executive department or an independent establishment of the United States for purposes of the provisions of section 78c(c) of title 15, United States Code.

"c. Bonds issued by the Corporation hereunder shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States. The Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the bonds of the Corporation acquired by them under this section: *Provided*, That the Corporation shall not issue or sell any bonds to the Federal Financing Bank.

"SEC. 1508. PRICING[:].—

"a. For purposes of maximizing the long-term economic value of the Corporation to the United States Government, the Corporation shall establish prices for its products, materials and services provided to customers other than the Department on a basis that will, over the long term, allow it to recover its costs for providing the products, materials and services; repay the Initial Debt; recover costs of decontamination, decommissioning and remedial action; and attain the normal business objectives of a profitmaking Corporation.

"b. The Corporation shall establish prices for low assay enrichment services and other products, materials, and services provided the Department on a basis that will allow it to recover its costs on a yearly basis for providing such low assay enrichment services, products, materials and services, including depreciation and the cost of decontamination, decommissioning and remedial action, but excluding repayment of the Initial Debt and profit. In establishing such prices, the base charge paid by the Department in any given year shall not exceed the average base charge paid by customers other than the Department: *Provided, however*, That if the imposition of such average base charges as a limitation on the base charge paid by the Department in a given year does not permit the Corporation to fully recover its costs for providing such products, materials and services to the Department then, in subsequent years, the Corporation shall include such unrecovered costs in its prices charged the Department. Base charge shall mean the amount paid by a customer per separative work unit for low assay enrichment services during a given year (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the cost of decontamination and decommissioning and remedial action. The average base charge paid by customers other than the Department shall be determined by dividing the estimated total dollar amount of low assay enrichment services sales to customers other than the Department during a given year by the estimated amount of separative work units sold to customers other than the Department during that year. Adjustments between estimated and actual amounts shall be made upon receipt of actual sales data.

"c. The Corporation shall establish prices to the Department for high assay enrichment services on a basis that will allow it to recover its costs, on a yearly basis, for providing the products, materials or services, including depreciation and the costs of decontamination, decommissioning, and remedial action concerning enrichment property, but excluding repayment of the Initial Debt and profit. If the Department does not request any enrichment services in a given year, the Department shall reimburse the Corporation for costs required to maintain the minimum level of operation of the high assay production facility.

"d. (1) In accordance with the cost responsibilities defined in paragraphs (3) and (4), the Corporation shall recover from its customers in the prices and charges established in accordance with subsection [(a)] *a.*, amounts that will be sufficient to pay for the costs of decommissioning, decontamination and remedial action for the various property of the Corporation, including property transferred under section 1505[(a)]*a.* at any time. Such costs shall be based on the point in time that such decommissioning, decontamination and remedial action are to be undertaken and accomplished: *Provided*, That by the year 2000 the Corporation shall have recovered and deposited in the Uranium Enrichment Decontamination and Decommissioning Fund 50 per centum of the estimated total costs of decontamination and decommissioning of all property transferred or to be transferred to the Corporation under section 1505, including the Oak Ridge Gaseous Diffusion Plant.

"(2) In order to meet the objective defined in paragraph (1), the Corporation shall periodically estimate the anticipated or actual costs of decommissioning and decontamination. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including, but not limited to, any changes in applicable environmental requirements. Such estimates shall be reviewed at least every two years.

"(3) For purposes of enabling the Corporation to meet the objective defined in para-

graph (1) with respect to the Oak Ridge Gaseous Diffusion Plant, the Secretary shall periodically estimate the anticipated costs of decontamination and decommissioning and the time at which such decontamination and decommissioning is to be accomplished. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including but not limited to, any changes in applicable environmental requirements. The Secretary shall review such estimates every two years and convey this information to the Corporation.

"(4) With respect to property that has been used in the production of low-assay separative work,

"(A) The cost of decommissioning, decontamination and remedial action that shall be recoverable from customers other than the Department in prices and charges shall be in the same ratio to the total costs of decommissioning, decontamination and remedial action for the property in question as the production of separative work over the life of such property for commercial customers bears to the total production of separative work over the life of such property.

"(B) All other costs of decommissioning, decontamination and remedial action for such property shall be recovered in prices and charges to the Department.

"(5) With respect to property that has been used solely in the production of high-assay separative work, all costs of decommissioning, decontamination and remedial action shall be recovered in prices and charges to the Department.

"SEC. 1509. AUDITS.—In fiscal years during which an audit is not performed by the Controller General in accordance with the provisions of section 9105 of title 31, United States Code, the financial transactions of the Corporation shall be audited by an independent firm or firms of nationally recognized certified public accountants who shall prepare such audits using standards appropriate for commercial corporate transactions. The fiscal year of the Corporation shall conform to the fiscal year of the United States. The General Accounting Office shall review such audits annually, and to the extent necessary, cause there to be a further examination of the Corporation using standards for commercial corporate transactions. Such audits shall be conducted at the place or places where the accounts of the Corporation are established and maintained. All books, financial records, reports, files, papers, memoranda, and other property of, or in use by, the Corporation shall be made available to the person or persons authorized to conduct audits in accordance with the provisions of this section.

"SEC. 1510. [Reports:] *REPORTS.*—

"a. The Corporation shall prepare an annual report of its activities. This report shall contain—

"(1) a general description of the Corporation's operations;

"(2) a summary of the Corporation's operating and financial performance, including an explanation of the decision to pay or not pay dividends; and

"(3) copies of audit reports prepared in conformance with section 1509 of this title and the provisions of the Government Corporation Control Act, as amended.

"b. A copy of the annual report shall be provided to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the appropriate committees of the House of Representatives. Such reports shall be completed not later than ninety days following the close of each fiscal year and shall accurately reflect the financial position of the Corporation at fiscal year end, inclusive of any impairment of capital or ability of the Corporation to comply with the provisions of this title.

"SEC. 1511. CONTROL OF INFORMATION[:].—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such terms appear in section 141 and subsections a. and b. of section 142 of title I.

"b. No contracts or arrangements shall be made, nor any contract continued in effect, under section 1401, 1402, 1403, or 1404, unless the person with whom such contract or arrangement is made, or the contractor or prospective contractor, agrees in writing not to permit any individual to have access to Restricted Data, as defined in section 11 y. of title I, until the Office of Personnel Management shall have made an investigation and report to the Corporation on the character, associations, and loyalty of such individual, and the Corporation shall have determined that permitting such person to have access to restricted data will not endanger the common defense and security.

"c. The restrictions detailed in subsections b., c., d., e., f., g., and h., of section 145 of title I shall be deemed to apply to the Corporation where they refer to the Commission or a majority of the members of the Commission, and to the Administrator where they refer to the General [manager] *Manager*.

"d. The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Corporation's activities. To the extent consistent with the other provisions of this section, the Corporation shall make available to any of such committees all books, financial records, reports, files, papers, memoranda, or other information possessed by the Corporation upon receiving a request for such information from the chairman of such committee.

"e. Whenever the Corporation submits to the President, or the Office of Management and Budget, any budget, legislative recommendation, testimony, or comments on legislation, prepared for submission to the Congress, the Corporation shall concurrently transmit a copy thereof to the appropriate committees of Congress.

"f. The Corporation shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

"SEC. 1512. PATENTS AND INVENTIONS[:].—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such term appears in section 152[,] *or;* 153 b. (1)[, and 158] of title I. The Corporation shall pay such royalty fees for patents licensed to it under section 153 b. (1) of title I as are paid by the Department under that provision. Nothing in title I or this title shall affect the right of the Corporation to require that patents granted on inventions, that have been conceived or first reduced to practice during the course of research or operations of, or financed by the Corporation, be assigned to the Corporation.

"b. The Department shall notify the Corporation of all reports heretofore or hereafter filed with it under subsection 151 c. of title I and all applications for patents heretofore or hereafter filed with the Commissioner of Patents of which the Department has notice under subsection 151 d. of title I or otherwise, whenever such reports or applications involve matters pertaining to the functions or responsibilities of the Corporation in accordance with this title. The Department shall make all such reports available to the Corporation, and the Commissioner of Patents shall provide the Corporation access to all such applications. All reports and applications to which access is so provided shall be kept in confidence by the Corporation, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress.

"c. The Corporation, without regard for any of the conditions specified in paragraph 153 c. (1), (2), (3), or (4) of title I, may at any time make application to the Department for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent when such patent has not been declared to be affected with the public interest under subsection 153 b. (1) of title I and when use of such patent is within the Corporation's authority. Any such application shall constitute an application under subsection 153 c. of title I subject, except as specified above, to all the provisions of subsections 153 c., d., e., f., g., and h., of title I.

"d. With respect to the Corporation's functions under this title, section 158 of title I shall be deemed to include the Corporation within the phrase, 'any other licensee' in the first sentence thereof and within the phrase 'such licensee' in the second sentence thereof.

"e. The Corporation shall not be liable directly or indirectly for any damages or financial responsibility *under section 183 of title 35, United States Code* with respect to secrecy orders imposed under [section 181 of title 35, United States Code, through 187.] *section 181 of such title.*

"f. The Corporation shall not be liable or responsible for any payments made or awards under subsection 157 b. (3) of title I, or any settlements or judgments involving claims for alleged patent infringement except to the extent that any such awards, settlements or judgments are attributable to activities of the Corporation after the effective date of this title.

"g. The Corporation shall keep currently informed as to matters affecting its rights and responsibilities under chapter 13 of title I as modified by this section and shall take all appropriate action to avail itself of such rights and satisfy such responsibilities. The Department in discharging its responsibilities under chapter 13 of title I shall exercise diligence in informing the Corporation of matters affecting the responsibilities and jurisdiction of the Corporation and seeking and following as appropriate the advice and recommendation of the Corporation in such matters.

"CHAPTER 26. LICENSING, TAXATION, AND MISCELLANEOUS PROVISIONS

"SEC. 1601. LICENSING[:].—

"a. Notwithstanding any other provision of law, with respect solely to facilities, equipment and materials for activities related to the isotopic separation of uranium by the gaseous diffusion technology at facilities in existence as of the date of enactment of this title, the Corporation and its contractors are hereby exempted from the licensing requirements and prohibitions of sections 57, 62, 81 and other provisions of title I, to the same extent as the Department and its contractors are exempt in regard to the Department's own functions and activities. Such exemption shall remain in effect unless and until the Corporation and its contractors receive all necessary licenses for such facilities, equipment and materials as are required under title I.

"b. Within two years of the enactment of this title, the Commission shall promulgate regulations or issue other regulatory guidance under title I for the licensing of facilities described in subsection (a) that employ the gaseous diffusion technology.

"c. Within one year after the promulgation of regulations or the issuance of other regulatory guidance under subsection (b), the Corporation and its contractors shall make necessary applications for and otherwise seek to obtain such licenses as will remove the exemption provided under subsection (a). As part of its application, the Corporation shall submit an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act. The Commission shall adopt this statement to the extent practicable under the National Environmental Policy Act. In preparing such statement, the Corporation, and in making any licensing decision, the Commission, shall not consider the need for such facilities, alternatives to such facilities, or the costs compared to the benefits of such facilities. The Commission shall act on licensing requests by the Corporation in a timely manner.

"d. The Corporation shall not transfer or deliver any source, special nuclear or byproduct materials or production or utilization facilities, as defined in title I, to any person who is not properly qualified or licensed under the provisions of title I.

"e. The Corporation shall be subject to the regulatory jurisdiction of the Commission and the Department of Transportation with respect to the packaging and transportation of source, special nuclear and byproduct materials.

"SEC. 1602. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.—

"a. In order to render financial assistance to those states and localities in which the facilities of the Corporation are located, the Corporation is authorized and directed *beginning in fiscal year 1997* to make payments to state and local governments as provided in this section. Such payments shall be in lieu of any and all state and local taxes on the real and personal property, activities and income of the Corporation. All property of the Corporation, its activities, and income are expressly exempted from taxation in any manner or form by any state, county, or other local government entity. The activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate and maintain its facilities. The income of the Corporation shall include income received by such organizations for the account of the Corporation. The income of the Corporation shall not include income received by such organizations for their own accounts, and such income shall not be exempt from taxation.

"b. [The] *Beginning in fiscal year 1997, the* corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the state and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making such determinations, the Corporation shall be guided by the following criteria:

"(1) Amounts paid shall not exceed the tax payments that would be made by a private industrial corporation owning similar facilities and engaged in similar activities at the same location: *Provided, however*, That there shall be excluded any amount that would be payable as a tax on net income.

"(2) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

"(3) No amount shall be included to the extent that any tax unfairly discriminates against the class of taxpayers of which the Corporation would be a member if it were a private industrial corporation, compared with other taxpayers or classes of taxpayers.

"(4) [In no event shall the payment made to any taxing authority for any period] *Following the commencement of payments in fiscal year 1997, no payment made to any taxing authority for any period shall* be less than the payments which would have been made to such taxing authority for the same period by the Department and its cost-type contractors on behalf of the Department with respect to property that has been transferred to the Corporation under section 1505 and which would have been attributable to the ownership, management operation, and maintenance of the Department's uranium enrichment facilities, applying the laws and policies prevailing immediately to the enactment of this title.

"c. Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and payable: *Provided*, That no payment shall be made to the extent that the tax would apply to a period prior to the enactment of this title.

"d. The determination by the Corporation of the amounts due hereunder shall be final and conclusive.

"SEC. 1603. MISCELLANEOUS APPLICABILITY OF TITLE I:

"a. Any references to the term 'Commission' or to the Department in sections 105 b., [110 a.,] 161 c., 161 k., 161 q., 165 a., 221 a., 229, 230 and 232 of title I shall be deemed to include the Corporation.

"b. Section 188 of title I shall apply to licensed facilities of the Corporation. For purposes of applying such section to facilities of the Corporation:

"(1) The term 'Commission' shall be deemed to refer to the Secretary;

"(2) There shall be no requirement for payment of just compensation to the Corporation, and receipts from operation of the facility in question shall continue to accrue to the benefit of the Corporation; and

"(3) The Secretary shall have the discretion to determine how and by whom the facility in question will be operated.

"SEC. 1604. COOPERATION WITH OTHER AGENCIES.—The Corporation is empowered to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Corporation. Further, the Corporation may confer with and avail itself of the cooperation, services, records, and facilities of state, territorial, municipal or other local agencies.

"SEC. 1605. APPLICABILITY OF ANTITRUST LAWS[:].—

"a. The Corporation shall conduct its activities in a manner consistent with the policies expressed in the antitrust laws, except as required by the public interest.

"b. As used in this subsection, the term 'antitrust laws' means:

"(1) The Act entitled: 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890 (15 U.S.C. 1–7), as amended;

"(2) The Act entitled, 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914 (15 U.S.C. 12–27), as amended;

"(3) Sections 73 and 74 of the Act entitled, 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

"(4) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

"SEC. 1606. NUCLEAR HAZARD INDEMNIFICATION.—The Administrator shall have the same authority to indemnify the contractors of the Corporation as the Secretary has to indemnify contractors under section 170 d. of title I. Except that with respect to any licenses issued to the Corporation by the Commission, the Commission shall treat the Corporation and its contractors as its licensees for the purposes of Section 170 of this Act.

"SEC. 1607. INTENT.—It is hereby declared to be the intent of this title to aid the Corporation in discharging its responsibilities under this title by providing it with adequate authority and administrative flexibility [to obtain necessary funds with which] to assure the maximum achievement of the purposes hereof as provided herein, and this title shall be construed liberally to effectuate such intent.

"SEC. 1608. REPORT:

"a. Three years after enactment of this title [or January, 1993, whichever is later,] the Administrator shall submit to the President and to Congress an interim report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. Five years after enactment of this title, the Administrator shall submit to the President and the Congress a final report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. If the Administrator, in the final report, recommends such transfers, the report shall include a plan for implementation of the transfers.

"b. Within one hundred and eighty days after receipt of the final report under subsection (a), the President shall transmit to Congress his recommendations regarding the report, including a plan for implementation of any transfers recommended by the President and any recommendations for legislation necessary to effectuate such transfers.

"CHAPTER 27. DECONTAMINATION AND DECOMMISSIONING

"SEC. 1701. ESTABLISHMENT[:].—

"a. ESTABLISHMENT OF FUND.—(1) There is hereby established in the Treasury of the United States an account of the Corporation to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (hereinafter referred to in this chapter as the 'Fund'). In accordance with section 1402(j), such account and any funds deposited therein, shall be available to the Corporation for the exclusive purpose of carrying out the purposes of this chapter.

"(2) The Fund shall consist of:

"(A) Amounts paid into it by the Corporation in accordance with section 1702; and

"(B) Any interest earned under subsection (b)(2).

"b. ADMINISTRATION OF FUND.—(1) The Secretary of the Treasury shall hold the Fund and, after consultation with the Corporation, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

"(2) At the direction of the Corporation, the Secretary of the Treasury shall invest amounts contained within such Fund in obligations of the United States:

"(A) Having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Fund, as determined by the Corporation; and

"(B) Bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to such obligations.

"(3) At the request of the Corporation, the Secretary of the Treasury shall sell such obligations and credit the proceeds to the Fund.

"SEC. 1702. DEPOSITS.—Within sixty days of the end of each fiscal year, the Corporation shall make a payment into the Fund in an amount equal to the costs of decontamination and decommissioning that have been recovered during such fiscal year by the Corporation in its prices and charges established in accordance with section 1508 for products, materials, and services.

"SEC. 1703. PERFORMANCE AND DISBURSEMENTS[:].—

"a. When the Corporation determines that particular property should be decommissioned or decontaminated, or both, or with respect to the Oak Ridge Gaseous Diffusion Plant at such time as the plant is conveyed to the Corporation, the Corporation shall enter into a contract for the performance of such decommissioning and decontamination.

"b. The Corporation shall pay for the costs of such decommissioning and decontamination out of amounts contained within the Fund.".

SEC. 113. TREATMENT OF THE CORPORATION AS BEING PRIVATELY-OWNED FOR PURPOSES OF THE APPLICABILITY OF ENVIRONMENTAL AND OCCUPATIONAL SAFETY LAWS.—The United States Enrichment Corporation shall be subject to Federal, State, and local environmental laws and the Occupational Safety and Health Act (29 U.S.C. 651–678) to the same extent as is the Department of Energy as of the date of enactment. After four years from the date of enactment of this title, the United States Enrichment Corporation shall become subject to such laws to the same extent as a privately-owned corporation, unless the President determines that additional time is necessary to achieve the purposes of title II of the Atomic Energy Act of 1954, as amended.

SEC. 114. MISCELLANEOUS PROVISIONS.—(a) Section 9101(3) of title 31, United States Code (relating to the definition of "wholly-owned Government corporation") is amended by adding at the end the following: "(N) United States Enrichment Corporation.".

(b) In subsection 41 a. of the Atomic Energy Act of 1954, as amended, the word "or" appearing before the numeral "(2)" is deleted, a semicolon is substituted for a period at the end of the subsection and the following new paragraph is added: "or (3) are owned by the United States Enrichment Corporation.".

(c) In subsection 53 c. (1) of the Atomic Energy Act of 1954, as amended, the word "or" is inserted before the word "grant" and the phrase "or through the provision of production or enrichment services" is deleted in both places where it appears in such subsection.

(d) The Atomic Energy Act of 1954, as amended, is further amended in section 318(1) by striking the period after "activities" and by adding the following:

"(D) any facility owned by the United States Enrichment Corporation.".

(e) Subsection 905(g)(1) of title [II, 2, United States Code, is amended to include "United States Enrichment Corporation" at the end thereof.]

(f) Section 306 of title III of the Energy and Water Development Appropriations Act, 1988, Public Law 100–202, is repealed.

SEC. 115. LIMITATION ON EXPENDITURES.—For fiscal year 1991, total expenditures of the United States Enrichment Corporation shall not exceed total receipts.

SEC. 116. SEVERABILITY.—If any provision of this title, or the application of any provision to any entity, person or circumstance, shall for any reason be adjudged by a court of component jurisdiction to be invalid, the remainder of this Act, or the application of the same shall not be thereby affected.

SEC. 117. EFFECTIVE DATE.—Except as otherwise provided, all provisions of this title shall take effect on the day following the end of the first full fiscal year quarter following the enactment of this Act: *Provided, however,* That the Administrator or Acting Administrator of the United States Enrichment Corporation may immediately exercise the management responsibilities and powers of subsection 1501(a) of the Atomic Energy Act of 1954, as amended by this Act [and previous Acts.]

SEC. 118. PAYMENT OF COST OF TRANSFER.—

(a) Notwithstanding section 1401j. of the Atomic Energy Act of 1954 as amended by section 112 of this title, any expense incurred by the Secretary or the Corporation in the course of setting up the Corporation or transferring the property or assets of the Department to the Corporation shall be subject to appropriation.

(b) There are authorized to be appropriated such sums as may be necessary to pay the costs of setting up the Corporation and transferring the property and assets of the Department to the Corporation under this title.

TITLE II[—URANIUM]

Subtitle A—Short Title, Findings and Purpose, Definitions

This title may be cited as the "Uranium Security and Tailings Reclamation Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds for purposes of this title that—

(1) the United States uranium industry has long been recognized as vital to United States energy independence and as essential to United States national security, but has suffered a drastic economic setback, including a 90 per centum reduction in employment, closure of almost all mines and mills, more than a 75 per centum drop in production, and a permanent loss of uranium reserves;

(2) during the remainder of this century approximately 20 per centum of United States electricity is expected to be produced from uranium fueled powerplants owned by domestic electric utilities;

(3) the United States has been the leading uranium producing nation and holds extensive proven reserves of natural uranium that offer the potential for secure sources of future supply;

(4) a variety of economic factors, policies of foreign governments, foreign export practices, the discovery and development of low cost foreign reserves, new Federal regulatory requirements, and cancellation of nuclear powerplants have caused most United States producers to close or suspend operations over the past six years and have resulted in the domestic uranium industry being found "not viable" by the Secretary under provisions of the Atomic Energy Act of 1954, as amended;

(5) providing assistance to the domestic uranium industry is essential to—

(A) preclude an undue threat from foreign supply disruptions that could hinder the Nation's common defense and security,

(B) assure an adequate long-term supply of domestic uranium for the Nation's nuclear power program to preclude an undue threat from foreign supply disruptions or price controls, and

(C) aid in the Nation's balance-of-trade payments through foreign sales;

(6) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901–7942);

(A) was enacted to provide for the reclamation and regulation of uranium and thorium mill tailings; and

(B) did not provide for a Federal contribution for the reclamation of tailings at uranium and thorium processing sites which were generated pursuant to Federal defense contracts;

(7) the owners or licensees of active uranium and thorium sites and the Federal Government have each benefitted from uranium and thorium produced at the active sites, and it is equitable that they share in the costs of reclamation, decommissioning and other remedial actions at the commingled sites; and,

(8) the creation of an assured system of financing will greatly facilitate and expedite reclamation and remedial actions at active uranium and thorium processing sites.

(b) PURPOSE.—It is the purpose of subtitles B and C of this title to—

(1) ensure an adequate long-term supply of domestic uranium for the Nation's common defense and security and for the Nation's nuclear power program;

(2) provide assistance to the domestic uranium industry; and

(3) establish, facilitate, and expedite a comprehensive system for financing reclamation and other remedial action at active uranium and thorium processing sites.

SEC. 203. DEFINITIONS.

For purposes of this title—

(1) the term "active site" means—

(A) any uranium or thorium processing site, including the mill, containing by-product material for which a license (issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, as amended, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)) for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(B) any other real property or improvement on such real property that is determined by the Commission to be—

(i) in the vicinity of such site; and

(ii) contaminated with residual by-product material;

(2) the term "byproduct material" has the meaning given such term in section 11(e)(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(e)(2));

(3) the term "civilian nuclear power reactor" means any civilian nuclear powerplant required to be licensed under section 103 or section 104 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2133);

(4) the term "Corporation" means the United States Enrichment Corporation es-

tablished under section 1202 of title II of the Atomic Energy Act of 1954, as amended;

(5) the term "Department" means the Department of Energy;

(6) the term "domestic uranium" means any uranium that has been mined in the United States including uranium recovered from uranium deposits in the United States by underground mining, open-pit mining, strip mining, in situ recovery, leaching, and ion recovery, or recovered from phosphoric acid manufactured in the United States;

(7) the term "domestic uranium producer" means a person or entity who produces domestic uranium and who has, to the extent required by State and Federal agencies having jurisdiction, licenses and permits for the operation, decontamination, decommissioning, and reclamation of sites, structures and equipment;

(8) the term "enrichment tails" means uranium in which the quantity of the U-235 isotope has been depleted in the enrichment process;

(9) the term "reclamation, decommissioning, and other remedial action" includes work, including but not limited to disposal work, accomplished in order to comply with all applicable requirements, including but not limited to those established pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, as amended, or where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021). The term shall also include work at an active site prior to the date of enactment of this act accomplished in order to comply with the foregoing requirements;

(10) the term "Secretary" means the Secretary of Energy;

(11) the terms "source material" and "special nuclear material" have the meaning given such terms in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014); and

(12) the term "tailings" means the wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Subtitle B—Uranium Revitalization

SEC. 210. VOLUNTARY OVERFEED PROGRAM.

(a) The Corporation shall establish, for a period of not less than five years commencing at the beginning of fiscal year 1992, a voluntary overfeeding program which shall be made available to the Corporation's enrichment services customers. The term "overfeeding" means the use of uranium in the enrichment process in excess of the amount required at the transactional tails assay.

(b) The Corporation shall encourage its enrichment services customers to participate in the voluntary overfeeding program as provided in this section. Uranium supplied by the enrichment customer shall be used by the Corporation for voluntary overfeeding in the enrichment process to reduce the amount of power required to produce the enriched uranium ordered by the enrichment services customer. The dollar savings resulting from the reduced power requirements shall be credited to the enrichment services customer.

(c) In the event an enrichment services customer does not elect to provide uranium for voluntary overfeeding to be used to process its enrichment order, the Corporation shall establish a method for such uranium to be voluntarily supplied by other enrichment services customer(s) which have expressed to the Corporation an interest in participating in such a program and the Corporation shall credit the resulting dollar savings realized from the reduced power requirements to the enrichment services customer(s) providing the uranium.

(d) An enrichment services customer providing uranium for voluntary overfeeding shall certify to the Corporation that such uranium is domestic uranium which has been actually produced by a domestic uranium producer after the enactment of this Act or domestic uranium actually produced by a domestic uranium producer before the enactment of this Act and held by it without sale, transfer or redesignation of the origin of such uranium on a DOE/NRC form 741.

(e) Within ninety days of the date of enactment of this Act, the Corporation shall establish procedures to implement this program. Such procedures shall include, but not be limited to, delivery, reporting and certification requirements, and provisions for failure to comply with the requirements of the voluntary overfeeding program. The determination of the voluntary overfeeding credit and sufficient data to support such determination shall be available to the Corporation's enrichment services customers and to qualified domestic producers.

SEC. 211. NATIONAL STRATEGIC URANIUM RESERVE.

There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of 50,000,000 pounds of natural uranium contained in stockpiles or inventories currently held by the United States for defense purposes. Effective on the date of enactment of this Act, use of the Reserve shall be restricted to military purposes and government research. Use of the Department's stockpile of enrichment tails existing on the date of enactment of this Act shall be restricted to military purposes.

SEC. 212. RESPONSIBILITY FOR THE INDUSTRY.

(a) The Secretary shall have a continuing responsibility for the domestic uranium industry, and shall take any action, which he determines to be appropriate under existing law, to encourage the use of domestic uranium: *Provided, however*, That the Secretary, in fulfilling this responsibility, shall not use any supervisory authority over the Corporation. The Secretary shall report annually to the appropriate committees of Congress on action taken with respect to the domestic uranium industry, including action to promote the export of domestic uranium pursuant to paragraph (b) of this section.

(b) ENCOURAGE EXPORT.—The Department, with the cooperation of the Department of Commerce, the United States Trade Representative and other governmental organizations, shall encourage the export of domestic uranium. Within one hundred and eighty days of the date of enactment of this Act the Secretary shall develop recommendations and implement government programs to promote the export of domestic uranium.

SEC. 213. GOVERNMENT URANIUM PURCHASES.

(a) After the date of enactment of this Act, the United States of America, its agencies and instrumentalities, shall only have the authority to enter into contracts or orders for the purchase of uranium which is (1) of domestic origin and (2) is purchased from domestic uranium producers: *Provided*, That this section shall not affect purchases under a contract for delivery of a fixed amount of uranium entered into before the date of enactment of this Act.

(b) Subsection (a) shall not apply to the Tennessee Valley Authority.

SEC. 214. SECRETARY'S AUTHORITY TO MAKE REGULATIONS.

The Secretary shall issue appropriate regulations to implement the purposes of this title.

Subtitle C—Remedial Action for Active Processing Sites

SEC. 220. REMEDIAL ACTION PROGRAM.

(a) IN GENERAL.—Except as provided in subsection (b), the costs of documentation, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity at such site which results or has resulted in the production of byproduct material.

(b) REIMBURSEMENT.—

(1) IN GENERAL.—The Secretary shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) for such portion of the reclamation, decommissioning and other remedial action costs described in such subsection as are—

(A) determined by the Secretary to be attributable to tailings generated as an incident of sales to the United States; and

(B) incurred by such licensee not later than December 31, 2002.

(2) AMOUNT.—

(A) TO INDIVIDUAL ACTIVE SITE URANIUM LICENSEES.—The amount of reimbursement paid to any licensee under paragraph (1) shall be determined by the Secretary in accordance with regulations issued pursuant to section 221 and shall not exceed an amount equal to $4.50 multiplied by the dry short tons of tailings located at the site as of the effective date of this title and generated as an incident of sales to the United States.

(B) TO ALL ACTIVE SITE URANIUM LICENSEES.—Payments made under paragraph (1) to active site uranium licensees shall not in the aggregate exceed $270,000,000.

(C) TO THORIUM LICENSEES.—Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed $30,000,000.

(D) INFLATION ESCALATION INDEX.—The amounts in subsections (A), (B) and (C) of this section shall be increased annually based upon an inflation index. The Secretary shall determine the appropriate index to apply.

(E) ADDITIONAL REIMBURSEMENT.—Provided however, (i) the Secretary shall determine as of July 31, 2005, whether the amount authorized to be appropriated in section 222, when considered with the $4.50 per dry short ton limit on reimbursement, exceeds the total cost reimbursable to the licensees of active sites for reclamation, decommissioning and other remedial action; and (ii) if the Secretary determines there is an excess, the Secretary may allow reimbursement in excess of $4.50 per dry short ton on a pro-rated basis at such sites that reclamation, decommissioning and other remedial action costs for tailings generated as an incident of sales to the United States exceed the $4.50 per dry short ton limitation.

SEC. 221. REGULATIONS.

The Secretary shall issue regulations governing reimbursement under section 220. An active uranium or thorium processing site owner shall apply for reimbursement hereunder by submitting a statement for the amount of reimbursement, together with reasonable documentation in support thereof, to the Secretary. Any such statement for reimbursement, supported by reasonable documentation, shall be approved by the Secretary and reimbursement therefor shall

be made in a timely manner subject only to the limitations of section 220.

SEC. 222. AUTHORIZATION.

There is authorized to be appropriated for purposes of this subtitle not more than $300,000,000 increased annually as provided in section 220 based upon an inflation index as determined by the Secretary.

Subtitle D—Imports of Uranium, Enriched Uranium, and Uranium Enrichment Services

SEC. 230. FINDING AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the domestic uranium industry and the economic viability of the Federal uranium enrichment enterprise may be threatened by exports of uranium and enriched uranium from non-market economy countries at prices which represent less than the cost of producing uranium or enriching uranium; and

(2) the national security and defense interests of the United States require that appropriate actions be taken to assure that the nuclear energy industry in the United States does not become unduly dependent on foreign sources of uranium or uranium enrichment services.

(b) PURPOSES.—The purposes of this subtitle are to—

(1) determine whether any uranium or enriched uranium is being exported by non-market economy countries at prices which represent less than the cost of producing such commodities; and

(2) provide for appropriate actions to assure the viability of the domestic uranium industry and the Federal uranium enrichment enterprise in order to protect the national security and defense interests of the United States.

SEC. 231. DEFINITIONS.

For the purposes of this subtitle, the term—

(1) "Administrator" means the Administrator of the Energy Information Administration;

(2) "Federal uranium enrichment enterprise" means the uranium enrichment activities of the Department of Energy or the United States Enrichment Corporation; and

(3) "utility regulatory authority" means any state agency or Federal agency that has ratemaking authority with respect to the sale of electric energy by any electric utility or independent power producer, except that for the purposes of this paragraph, the terms "electric utility", "state agency", "Federal agency", and "ratemaking authority" have the same meanings as the terms have under section 3 of the Public Utility Regulatory Policies Act of 1978.

SEC. 232. UNITED STATES INTERNATIONAL TRADE COMMISSION INVESTIGATION.

(a) Within sixty days after the date of enactment of this subtitle, the United States International Trade Commission, shall initiate an investigation to determine—

(1) the quantities of uranium or enriched uranium being exported from non-market economy countries;

(2) the amount and nature of uranium enrichment services being offered by non-market economy countries; and

(3) whether such uranium, enriched uranium or enrichment services are being offered at prices which represent less than the cost of producing such uranium or enriched uranium or providing such uranium enrichment services.

(b) The Secretary, the Administrator and the Secretary of Commerce shall cooperate fully with the Commission in the investigation and shall furnish them all records, analyses and information in their possession regarding the production costs, sales costs and exports of uranium and enriched uranium, or the provision of uranium enrichment services, by non-market economy countries.

(c)(1) Within one year after the date of enactment of this part and annually thereafter, the Commission shall furnish a report containing the results of the investigation and its determination under paragraph (a)(3) to the President, for the use of the Secretary and Secretary of Commerce, and the Congress.

(2) If the Commission determines that any non-market economy country is exporting uranium or enriched uranium, or providing enrichment services, at prices which represent less than the cost of production, the President, or his designee, within 120 days of receipt of the report from the Commission, shall transmit to the Congress a report on what actions are being taken by the Federal Government to discourage or end such pricing practices, including the status of any negotiations with such country to end such pricing practices.

(d) The Commission shall take such steps as, in its judgment, are necessary, including the classification of information, to assure appropriate protection of any confidential information.

SEC. 233. URANIUM PURCHASES REPORTS.

(a) By January 1 of each year, the owner or operator of any civilian nuclear power reactor shall report to the Secretary, acting through the Administrator, for activities of the previous fiscal year—

(1) the country of origin and the seller of any uranium or enriched uranium purchased or imported into the United States either directly or indirectly by such owner or operator; and

(2) the country of origin and the seller of any enrichment services purchased by such owner or operator.

(b) The information provided to the Secretary pursuant to this section shall be made available to the Committee on Energy and Natural Resources of the United States Senate and appropriate committees of the United States House of Representatives by March 1 of each year.

(c) For the purposes of this section, the term "country of origin" means,

(1) with respect to uranium, that country where the uranium was mined or,

(2) with respect to enriched uranium, that country where the uranium was mined and enriched, or

(3) with respect to enrichment services, that country where the enrichment services were performed.

SEC. 234. REGULATORY TREATMENT OF URANIUM PURCHASES.

(a) The Secretary shall encourage States and utility regulatory authorities to take into consideration the achievement of the objectives and purposes of this subtitle, including the national need to avoid dependence on imports, when considering whether to allow the owner or operator of any electric power plant to recover in its rates and charges to customers any cost of purchase of domestic uranium, enriched uranium or enrichment services from a non-affiliated seller greater than the cost of non-domestic uranium, enriched uranium or enrichment services.

(b) Within one year of the date of enactment of this subtitle, and annually thereafter, the Secretary shall report to Congress on his progress in encouraging actions by State regulatory authorities pursuant to subsection (a). Such report shall include detailed information on programs initiated by the Secretary to encourage appropriate State regulatory action and recommendations, if any, on further action that could be taken by the Secretary, other Federal agencies, or the Congress in order to further the purposes of this subtitle.

(c) As used in this section, a seller is "non-affiliated" if it does not control, and is not controlled by or under common control with the buyer.

SEC. 235. UNITED STATES PURCHASE OF ENRICHED URANIUM.

(a) Subject to the limitations of subsection (b), the Secretary or the United States Enrichment Corporation is authorized to purchase enriched uranium from other sources of enriched uranium at prices below the production costs of the Department of Energy or the Corporation, respectively, if such purchases are necessary to reduce production costs and maintain competitive prices.

(b) If enriched uranium purchased by the Secretary or the United States Enrichment Corporation is used to supply enrichment customers, any uranium provided by such customers to the Secretary or the United States Enrichment Corporation as feed material may only be used for rebuilding uranium inventory or for overfeeding purposes.

The PRESIDING OFFICER. Without objection, the reported committee amendments are agreed to.

Are there further amendments?

AMENDMENT NO. 318

(Purpose: To correct a printing error in the text of S. 210)

Mr. MITCHELL. Mr. President, on behalf of Senator FORD, I send a technical amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. FORD, proposes an amendment numbered 318.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 59, strike lines 8 through 10, and insert in lieu thereof the following:

"(e) Subsection 905(g)(1) of title 2, United States Code, is amended to include 'United States Enrichment Corporation' at the end thereof."

The PRESIDING OFFICER. Without objection, the amendment (No. 318) is agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Mr. President, almost one-half of the capital base of the United States electric power industry is invested in 100 uranium-fueled nuclear facilities that now supply 20 percent of the United States' electricity. In addition, our nuclear fleet of 150 uranium-fueled submarines and surface ships must have sufficient uranium to assure an uninterrupted fuel supply.

For more than five years the Committee has labored with this critical matter only to have legislative proposals passed by the Senate on four occasions die in the House. The Congress is long overdue in coming to grips with the fact that the Federal Government's uranium enrichment enterprise is no longer able to effectively compete with its more aggressive counterparts around the world.

Since we began this effort, the character of international markets has

changed dramatically. The Soviet Union is now actively dumping uranium and enriched uranium in order to increase their market share. Only last week, the Soviet Union's Techsnabexport announced that it had formed a joint venture with Concord/Nuexco—the Global Nuclear Services & Supply Inc.—to market the full range of nuclear fuel services of the U.S.S.R.'s Ministry of Atomic Power & Industry. Its principal office will be in Washington, DC, although Global Nuclear is being incorporated in Switzerland.

The Soviet Union is clearly bent on becoming a major force in the United States fuel market. Among their announced objectives is greater hard-currency income and an announced intent to capture in excess of 25 percent of the Western world's nuclear fuel market. How they intend to achieve the market share that is their stated objective is not fully understood. But my concern is enhanced by their recent creation of Global Nuclear Services.

The committee amendment thus provides for a study by the International Trade Commission of the uranium and uranium enrichment marketing practices of nonmarketing countries. The committee is not as much concerned for whether or not dumping is occurring, or whether or not economic injury is being incurred, as it is concerned for whether or not their prices reflect true production costs. In this regard, I recognize that it is difficult to determine comparable production costs for such non-market economies to those for market economies.

But, even more importantly, I am concerned with what actions the Administration proposed to discourage marketing practices such as those being promoted by the Soviet Union.

No matter what your vantage point, whether you view this matter from the perspective of the bureaucrat, the budget cruncher, the taxpayer, or DOE's customers, their actions must be viewed as a threat to DOE's enrichment enterprise and the Enrichment Corporation that this legislation would establish. Soviet prices appear to bear no relationship to real production costs. As a consequence, their marketing practices have already—the Soviet's marketing practices—have driven uranium prices to record lows which have led to the closure of many mines and mills in the United States.

The full scope of the threat of the Soviet Union's marketing practices to DOE's enrichment enterprise is unknown, but informed sources estimate that their stockpiles range as high as 500 million pounds. Moreover their estimated annual production of uranium may be as high as 35 million pounds a year. By comparison, the U.S. uranium production last year was about 8.7 million pounds, less than 25 percent of U.S. demand. With little effort the Soviets could dump uranium on the international marketplace in volumes greater than the entire United States production.

The Soviets have made no secret of their efforts to capture a substantial part of the world market in nuclear fuel. Experts believe they could easily export enough enriched uranium to take half of DOE's U.S. market and more natural uranium than all the U.S. production projected for this year.

U.S. utilities need about 40 million pounds of uranium a year to run the reactors that now supply almost 20 percent of our needs for electrical power. Already half of this uranium is imported from abroad. After 1995, with inventories depleted, uranium imports will increase sharply.

Some of these imports will come from countries like Canada, but more will come from other sources like Russia, China, and Africa. It is ironic that the utilities which spend millions to advertise their concerns about our dependence on foreign oil are willing to become so dependent on foreign sources for nuclear fuel.

Utilities talk about the need to buy the cheapest fuel, but they may be "penny wise and pound foolish" in taking this approach. The fuel costs for uranium and enrichment services are only 7 percent of the total cost of nuclear energy. To pay a few cents more for U.S. products seems a small price to pay to reduce long-term security risks.

I fully support Congressional efforts to restructure DOE's enrichment enterprise into a creature that thinks, looks, acts, and responds like a business. Whether the Soviet Union is dumping uranium or not is not the question. The concern is the effect of their pricing practices on domestic uranium producers and the Federal enrichment enterprise which must meet the U.S. uranium enrichment requirements for defense purposes as well as its commercial customers.

In addition, the Enrichment Corporation must be able to respond to the Soviet Union's marketing practices once it is established. For this reason the committee bill grants DOE authority to buy uranium and enriched uranium from the Soviet Union on the same basis as DOE's customers. DOE would thus have the option, which it does not now have, of buying the Soviet enriched uranium being dumped.

If DOE were to elect to purchase Soviet enriched uranium it could reduce its production costs. Some of the cost savings could be passed on to DOE's utility customers—thus reducing domestic enriched uranium prices.

In order to protect the domestic mining industry from a possible side-effect of such purchases, DOE is restricted in its use of natural uranium stocks provided to it by its utility customers. For example, if DOE were to purchase enriched uranium on the world market, any utility owned uranium stocks held by DOE could not be sold; however, DOE could use such stocks for overfeeding purposes and thus could further reduce its costs. Some of these cost savings could be passed on to DOE's customers.

It must be recognized that the success of the Soviet Union's marketing strategy depends, in part, on the apparent willingness of some United States utilities to buy Soviet natural or enriched uranium and enrichment services. There is no common practice in this regard. Some utilities will not buy Soviet uranium. Others restrict their purchases because of recognition that a viable domestic industry is in their interest.

But what is happening is being influenced by an uncertainty regarding approval of such purchases by State regulatory commissions. Spokesmen for utilities have expressed concern that should they purchase domestic uranium or enriched uranium at prices higher than they can obtain their needs internationally that their domestic purchases will be questioned by State regulatory bodies as prudent.

This is a valid concern which is addressed in the committee amendment which directs the Secretary of Energy to encourage State utility authorities to consider the importance of maintaining a viable domestic uranium industry when deciding whether to allow recovery of associated uranium costs through rates charged to customers.

Mr. President, it ought to go without saying that until we can once again assure the future of nuclear power as a viable option in our Nation's energy future, our continuing dependence on imported oil will remain a threat to our Nation's economic health and energy security.

S. 210 is structured to address this concern. I recommend it for your support.

The PRESIDING OFFICER. Without objection, the bill is deemed read three times and passed.

So the bill (S. 210), as amended, was passed, as follows:

S. 210

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be referred to as the "Comprehensive Uranium Act of 1991".

TITLE I

SEC. 110. SHORT TITLE.—This title may be cited as the "Uranium Enrichment Act of 1991".

SEC. 111. DELETION OF SECTION 161 v.—Subsection 161 v. of the Atomic Energy Act of 1954, as amended, is deleted and the remaining subsections are relettered accordingly.

SEC. 112. REDIRECTION OF THE URANIUM ENRICHMENT ENTERPRISE OF THE UNITED STATES.—The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011–2296) is further amended by—

a. inserting at the commencement thereof after the words "ATOMIC ENERGY ACT OF 1954":

"TITLE I—ATOMIC ENERGY";

and

b. adding at the end thereof the following:

"TITLE II—UNITED STATES ENRICHMENT CORPORATION

"CHAPTER 21. FINDINGS

"SEC. 1101. FINDINGS.—The Congress of the United States finds that:

"a. The enrichment of uranium is essential to the national security and energy security of the United States.

"b. A competitive, well-managed and efficient enrichment enterprise provides important economic benefits to the United States and contributes to a highly favorable foreign trade balance.

"c. A strong United States enrichment enterprise promotes United States nonproliferation policies by requiring accountability for United States enriched uranium.

"d. The operation of uranium enrichment facilities must meet high standards for environmental health and safety.

"e. The operation and management of a uranium enrichment enterprise requires a commercial business orientation in order to engender customer support and confidence, and customers, rather than the taxpayers at large, should bear the costs of commercial uranium enrichment services.

"f. The optimal level of expenditures for the uranium enrichment enterprise fluctuates and cannot be accurately predicted or efficiently financed if subject to annual authorization and appropriation.

"g. Flexibility is essential to adapt business operations to a competitive marketplace.

"h. The events of the recent past, including the emergence of foreign competition, have brought new and unforeseen forces to bear upon the management and operation of the Government's uranium enrichment enterprise.

"i. The present operation of the uranium enrichment enterprise must be changed so as to further the national interest in the enterprise and respond to the competitive demand placed upon it by market forces, while continuing to meet the paramount objective of ensuring the Nation's common defense and security.

"CHAPTER 22. DEFINITIONS, ESTABLISHMENT OF CORPORATION AND PURPOSES

"SEC. 1201. DEFINITIONS.—For the purpose of this title:

"a. The term 'Secretary' means the Secretary of Energy.

"b. The term 'Department' means the Department of Energy of the United States.

"c. The term 'Administrator' means the chief executive officer of the United States Enrichment Corporation.

"d. The term 'Corporation' means the United States Enrichment Corporation.

"e. The term 'Corporate Board' means the appointed members of the official advisory panel appointed by the President pursuant to section 1503 of this title.

"f. The term 'uranium enrichment' means the separation of uranium of a given isotopic content into two components, one having a higher percentage of a fissile isotope and one having a lower percentage.

"g. The term 'remedial action' has the same meaning as defined in section 120(24) of the Comprehensive Environmental Response, Compensation and Liability Act.

"h. The term 'decontamination and decommissioning' means those activities undertaken to decontaminate and decommission inactive facilities that have residual radioactive or mixed radioactive and hazardous chemical contamination.

"SEC. 1202. ESTABLISHMENT OF THE CORPORATION.—

"a. There is hereby created a body corporate to be known as the 'United States Enrichment Corporation'.

"b. The Corporation shall—

"(1) be established as a wholly owned Government corporation subject to the Government Corporation Control Act, as amended (31 U.S.C. 9101–9109), except as otherwise provided herein; and

"(2) be an agency and instrumentality of the United States.

"SEC. 1203. PURPOSES.—The Corporation is created for the following purposes—

"a. to acquire feed material for uranium enrichment, enriched uranium, the Department's uranium previously set aside for commercial purposes, and the Department's uranium enrichment and related facilities;

"b. to operate, and as required by business conditions, to expand or construct facilities for uranium enrichment or both;

"c. to market and sell enriched uranium and uranium enrichment and related services to—

"(1) the Department for governmental purposes; and

"(2) qualified domestic and foreign persons;

"d. to conduct research and development as required to meet corporate objectives for the purpose of identifying, evaluating, improving and testing processes for uranium enrichment;

"e. to operate, as a commercial enterprise, on a profitable and efficient basis; in order to maximize the long-term economic value of the Corporation to the United States Government including the payment of dividends to the Treasury as a return on the United States Government investment;

"f. to conduct the business as a self-financing corporation and eliminate the need for appropriations or other sources of Government financing after enactment of this title;

"g. to maintain a reliable and economical domestic source of enrichment services;

"h. to conduct its activities in a manner consistent with the health and safety of the public;

"i. to continue to meet the paramount objectives of ensuring the Nation's common defense and security (including consideration of United States policies concerning nonproliferation of atomic weapons and other nonpeaceful uses of atomic energy); and

"j. to take all other lawful action in furtherance of the foregoing purposes.

"CHAPTER 23. CORPORATE OFFICES

"SEC. 1301. CORPORATE OFFICES.—The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

"CHAPTER 24. POWERS AND DUTIES OF THE CORPORATION

"SEC. 1401. SPECIFIC CORPORATE POWERS AND DUTIES.—The Corporation—

"a. shall perform uranium enrichment or provide for uranium to be enriched by others at facilities of the Corporation; contracts in existence as of the date of enactment of this title between the Department and persons under contract to perform uranium enrichment and related services at facilities of the Department shall continue in effect as if the Corporation, rather than the Department, had executed these contracts;

"b. shall conduct, or provide for the conduct of, research and development activities related to the isotopic separation of uranium as the Corporation deems necessary or advisable for purposes of maintaining the Corporation as a continuing, commercial enterprise operating on a profitable and efficient basis;

"c. may acquire or distribute enriched uranium, feed material for uranium enrichment or depleted uranium in transactions with—

"(1) persons licensed under sections 53, 63, 103, or 104 of title I in accordance with the licenses held by such persons;

"(2) persons in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I; or

"(3) as otherwise authorized by law;

"d. may—

"(1) enter into contracts with persons licensed under section 53, 63, 103, or 104 of title I for such periods of time as the Corporation may deem necessary or desirable, to provide uranium or uranium enrichment and related services; and

"(2) enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I or as otherwise authorized by law;

"e. shall sell to the Department as provided in this title, and without regard to section 57 e. of title I or the provisions of section 1535 of title 31, United States Code, such amounts of uranium or uranium enrichment and related services as the Department may determine from time to time are required: (1) for the Department to carry out Presidential direction and authorizations pursuant to section 91 of title I; and (2) for the conduct of other Department programs;

"f. may grant licenses, both exclusive and nonexclusive, for the use of patent and patent applications owned by the Corporation, and establish and collect charges, in the form of royalties or otherwise, for utilization of Corporation-owned facilities, equipment, patents, and technical information of a proprietary nature pertaining to the Corporation's activities.

"SEC. 1402. GENERAL POWERS OF THE CORPORATION.—In order to accomplish the purposes of this title, the Corporation—

"a. shall have perpetual succession unless dissolved by Act of Congress;

"b. may adopt, alter, and use a corporate seal, which shall be judicially noticed;

"c. may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

"d. may indemnify the Administrator, officers, attorneys, agents and employees of the Corporation for liabilities and expenses incurred in connection with their corporate activities;

"e. may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the power granted to it by law may be exercised and enjoyed;

"f. (1) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it deems necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and personal property, as it deems necessary to effectuate the purposes of this title

and without regard to the Federal Property and Administrative Services Act of 1949, as amended;

"(2) Purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, made by the Corporation shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Corporation shall determine to be adequate to insure notice and an opportunity for competition; *Provided*, That advertising shall not be required when the Corporation determines that the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this title, or that advertising is not reasonably practicable;

"g. with the consent of the agency or Government concerned, may utilize or employ the services or personnel of any Federal Government agency, or any State or local government, or voluntary or uncompensated personnel to perform such functions on its behalf as may appear desirable;

"h. may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

"i. may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and other provisions of law specifically applicable to wholly owned Government corporations;

"j. notwithstanding any other provision of law, and without need for further appropriation, may use moneys, unexpended appropriations, revenues and receipts from operations, amounts received from obligations issued and other assets of the Corporation in accordance with section 1505, without fiscal year limitation, for the payment of expenses and other obligations incurred by the Corporation in carrying out its functions under, and within the requirements of, this title; and shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code;

"k. may settle and adjust claims held by the Corporation against other persons or parties and claims by other persons or parties against the Corporation;

"l. may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the Corporation;

"m. shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

"n. may define appropriate information as 'Government Commercial Information' and exempt such information from mandatory release pursuant to section 552(b)(3) of title 5, United States Code, when it is determined by the Administrator that such information if publicly released would harm the Corporation's legitimate commercial interests or those of a third party;

"o. may request, and the Administrator of General Services, when requested, shall furnish the Corporation such services as he is authorized to provide agencies of the United States;

"p. may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes herein authorized;

"q. may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

"r. shall pay any settlement or judgment entered against it from the Corporation's own funds and not from the judgment fund (31 U.S.C. 1304). The provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671 et seq.) shall not apply to any claims arising from the activities of the Corporation after the effective date of this statute; *Provided*, That, this subsection shall not apply to liability or claims arising from a nuclear incident, if such incident occurs prior to the licensing of the Corporation's existing Gaseous Diffusion Facilities under Section 1601 of this title.

"SEC. 1403. CONTINUATION OF CONTRACTS, ORDERS, PROCEEDINGS AND REGULATIONS.—

"a. Except as provided elsewhere in this title, all contracts, agreements, and leases with the Department, and licenses, and privileges that have been afforded to the Department prior to the date of the enactment of this title and that relate to uranium enrichment, including all enrichment services contracts, power purchase contracts and the December 18, 1987 Settlement Agreement with the Tennessee Valley Authority regarding payment of capacity charges under the Department's two power contracts with the Tennessee Valley Authority, shall continue in effect as if the Corporation had executed such contracts, agreements, or leases or had been afforded such licenses and privileges.

"b. As related to the functions vested in the Corporation by this title, all orders, determinations, rules, regulations and privileges of the Department shall continue in effect and remain applicable to the Corporation until modified, terminated, superseded, set aside or revoked by the Corporation, by any court of competent jurisdiction, or by operation of law unless otherwise specifically provided in this title.

"c. Except as provided in section 1404, the transfer of functions related to and vested in the Corporation by this title shall not affect proceedings judicial or otherwise, relating to such functions which are pending at the time this title takes effect, and such proceedings shall be continued with the Corporation, as appropriate.

"SEC. 1404. LIABILITIES.—Except as provided elsewhere in this title, all liabilities attributable to operation of the uranium enrichment enterprise prior to the date of the enactment of this title shall remain direct liabilities of the Government of the United States; with regard to any claim seeking to impose such liability, section 1403 shall not be applicable and the United States shall be represented by the Department of Justice.

"CHAPTER 25. ORGANIZATION, FINANCE AND MANAGEMENT

"SEC. 1501. ADMINISTRATOR.—

"a. The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation. The Administrator shall be a person who, by reason of professional background and experience is specially qualified to manage the Corporation; *Provided, however*, That upon enactment of this title, the President shall appoint an existing officer or employee of the United States to act as Administrator until the office is filled.

"b. The Administrator—

"(1) shall be the chief executive officer of the Corporation and shall be responsible for the management and direction of the Corporation. The Administrator shall establish the offices, appoint the officers and employees of the Corporation (including attorneys), and define their responsibilities and duties. The Administrator shall appoint other officers and employees as may be required to conduct the Corporation's business;

"(2) shall serve a term of six years but may be reappointed;

"(3) shall, before taking office, take an oath to faithfully discharge the duties thereof;

"(4) shall have compensation determined by the President based upon the recommendation of the Secretary and the Corporate Board as provided in section 1503 d., except that in the absence of such determination compensation shall be set at Executive Level I, as prescribed in section 5312 of title 5, U.S.C.;

"(5) shall be a citizen of the United States;

"(6) shall designate an officer of the Corporation who shall be vested with the authority to act in the capacity of the Administrator in the event of absence or incapacity; and

"(7) may be removed from office only by the President and only for neglect of duty or malfeasance in office. The President shall communicate the reasons for any such removal to both Houses of Congress at least 30 days prior to the effective date of such removal.

"c. (1) The Secretary shall exercise general supervision over the Administrator only with respect to the activities of the Corporation involving—

"(A) the Nation's common defense and security; and

"(B) health, safety and the environment.

"(2) The Administrator shall be solely responsible for the exercise of all powers and responsibilities that are committed to the Administrator under this title and that are not reserved to the Secretary under paragraph (1), and, notwithstanding the provisions of section 9104(a)(4) of title 31, United States Code, including the setting of the appropriate amount of, and paying, any dividend under section 1506 c. and all other fiscal matters.

"SEC. 1502. DELEGATION.—The Administrator may delegate to other officers or employees powers and duties assigned to the Corporation in order to achieve the purposes of this title.

"SEC. 1503. CORPORATE BOARD.—

"a. There is hereby established a Corporate Board appointed by the President which shall consist of five members, one of whom shall be designated as chairman. Members of the Corporate Board shall be individuals possessing high integrity, demonstrated accomplishment and broad experience in management and shall have strong backgrounds in science, engineering, business or finance. At least one member of the Corporate Board shall be, or previously have been, employed on a full-time basis in managing an electric utility.

"b. (1) The specific responsibilities of the Corporate Board shall be to:

"(A) review the Corporation's policies and performance and advise the Administrator and the Secretary on these matters; and

"(B) advise the Administrator and the Secretary on any other such matters concerning the Corporation as may be referred to the Corporate Board.

"(2) The Board shall have the right to recommend removal of the Administrator. In

the event such recommendation is made, it shall be transmitted to the President by the Secretary, together with the Secretary's own recommendation on removal of the Administrator.

"c. Members of the Board shall be provided access to all significant reports, memoranda, or other written communications generated or received by the Corporation. At the request of the Board, the Corporation shall make available to the Board all financial records, reports, files, papers and memoranda of, or in use by, the Corporation.

"d. When appropriate, the Corporate Board may make recommendations to the Secretary concerning the compensation to be received by the Administrator and the ten officers of the Corporation who may receive compensation in excess of Executive Level II as provided in section 1504 b. The Secretary shall transmit such recommendations to the President together with the Secretary's own recommendations concerning compensation. In the event that less than three members of the Corporate Board are in office, recommendations concerning compensation may be made by the Secretary alone. The President shall have the power to enter into binding agreements concerning compensation to be received by the Administrator during his term of office and by the ten officers described in section 1504 b. during their term of employment, regardless of any recommendation received or not received under this title.

"e. Except for initial appointments, members of the Corporate Board shall serve five-year terms. Each member of the Corporate Board shall be a citizen of the United States. No more than three members of the Board shall be members of any one political party. Of those first appointed, the chairman shall serve for the full five-year term; one member shall serve for a term of four years; one shall serve for a term of three years; one shall serve for a term of two years; and one shall serve for a term of one year.

"f. Upon expiration of the initial term, such Corporate Board member appointed thereafter shall serve a term of five years. Upon the occurrence of a vacancy on the Board, the President shall appoint an individual to fill such vacancy for the remainder of the applicable term. Upon expiration of a term, a Board member may continue to serve up to a maximum of one year or until a successor shall have been appointed and assumed office, whichever occurs first.

"g. The members of the Corporate Board in executing their duties shall be governed by the laws and regulations regarding conflicts of interest, but exempted from other provisions and authority prescribed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

"h. The Corporate Board shall meet at any time pursuant to the call of the Chairman and as provided by the bylaws of the Corporation, but not less than quarterly. The Administrator or his representative shall attend all meetings of the Corporate Board.

"i. The Corporation shall compensate members of the Corporate Board at a per diem rate equivalent to Executive Level III, as defined in 5 U.S.C. 5314, in addition to reimbursement of reasonable expenses incurred when engaged in the performance of duties vested in the Corporate Board. Any Corporate Board member who is otherwise a Federal employee shall not be eligible for compensation above reimbursement for reasonable expenses incurred while attending official meetings of the Corporation.

"j. (1) The Corporate Board shall report at least annually to the Administrator on the performance of the Corporation and the issues that, in the opinion of the Board, require the attention of the Administrator. Any such report shall include such recommendations as the Board finds appropriate. A copy of any report under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate and to the Speaker of the House of Representatives.

"(2) Within ninety days after the receipt of any report under this subsection the Administrator shall respond in writing to such report and provide an analysis of such recommendations of the Board contained in the report. Such responses shall include plans for implementation of each recommendation or a justification for not implementing such recommendation. A copy of any response under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources and to the Speaker of the House of Representatives.

"SEC. 1504. EMPLOYEES OF THE CORPORATION.—

"a. Officers and employees of the Corporation shall be officers and employees of the United States.

"b. The Administrator shall appoint all officers, employees and agents of the Corporation as are deemed necessary to effect the provisions of this title without regard to any administratively imposed limits on personnel, and any such officer, employee or agent shall only be subject to the supervision of the Administrator. The Administrator shall fix all compensation in accordance with the comparable pay provisions of section 5301 of title 5, United States Code, with compensation levels not to exceed Executive Level II, as defined in section 5313 of title 5, United States Code; Provided, that the Administrator may, upon recommendation by the Secretary and the Corporate Board as provided in section 1503 d. and approval by the President, appoint up to ten officers whose compensation shall not exceed an amount which is 20 per centum less than the compensation received by the Administrator, but not less than Executive Level II. The Administrator shall define the duties of all officers and employees and provide a system of organization inclusive of a personnel management system to fix responsibilities and promote efficiency. The Corporation shall assure that the personnel function and organization is consistent with the principles of section 2301(b) of title 5, United States Code, relating to merit system principles. Officers and employees of the Corporation shall be appointed, promoted and assigned on the basis of merit and fitness, and other personnel actions shall be consistent with the principles of fairness and due process but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service.

"c. Any Federal employee hired before January 1, 1984, who transfers to the Corporation and who on the day before the date of transfer is subject to the Federal Civil Service Retirement System (subchapter III of chapter 83 of title 5, United States Code) shall remain within the coverage of such system unless he or she elects to be subject to the Federal Employees' Retirement System. For those employees remaining in the Federal Civil Service Retirement System, the Corporation shall withhold pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in chapter 83 of title 5, United States Code. Employment by the Corporation without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. Any employee of the Corporation who is not within the coverage of the Federal Civil Service Retirement System shall be subject to the Federal Employees' Retirement System (chapter 84 of title 5, United States Code). The Corporation shall withhold pay and make such payments as are required under that retirement system. Further:

"(1) Any employee who transfers to the Corporation under this section shall not be entitled to lump sum payments for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Corporation with the unused annual leave at the time of transfer.

"(2) An employee who does not transfer to the Corporation and who does not otherwise remain a Federal employee shall be entitled to all the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Corporation of work substantially similar to that performed by the employee for the Department.

"d. This section does not affect a right or remedy of an officer, employee, or applicant for employment under a law prohibiting discrimination in employment in the Government on the basis of race, color, religion, age, sex, national origin, political affiliation, martial status, or handicap conditions.

"e. Officers and employees of the Corporation shall be covered by chapter 73 of title 5, United States Code, relating to suitability, security and conduct.

"f. Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the Department or the executive branch of the Government of the United States shall continue to apply to officers and employees who transfer to the Corporation from other Federal employment until changed by the Corporation in accordance with the provisions of this title.

"g. The provisions of sections 3323(a) and 8344 of title 5, United States Code, or any other law prohibiting or limiting the reemployment of retired officers or employees or the simultaneous receipt of compensation and retired pay or annuities, shall not apply to officers and employees of the Corporation who have retired from or ceased previous government service prior to April 28, 1987.

"SEC. 1505. TRANSFER OF PROPERTY TO THE CORPORATION.—

"a. The Secretary, as requested by the Administrator, is authorized and directed to transfer without charge to the Corporation all of the Department's right, title, or interest in and to, real or personal properties owned by the Department, or by the United States but under control or custody of the Department, which are related to and materially useful in the performance of the functions transferred by this title, including but not limited to the following—

"(1) production facilities for uranium enrichment inclusive of real estate, buildings and other improvements at production sites and their related and supporting equipment: *Provided*, That facilities, real estate, improvements and equipment related to the Oak Ridge Gaseous Diffusion Plant in Oak Ridge, Tennessee, and to the gas centrifuge

enrichment program shall not transfer under this paragraph except for diffusion cascades and related equipment needed by the Corporation for replacement parts: *Provided further*, That any enrichment facilities retained by the Department shall not be used to enrich uranium in competition with the Corporation. This paragraph shall not prejudice consideration of any site as a candidate site for future expansion or replacement of uranium enrichment capacity;

"(2) at such time subsequent to the year 2000 as the Secretary determines that the Oak Ridge Gaseous Diffusion Plant should be decommissioned or decontaminated, or both, the Secretary shall convey without charge equipment and facilities relating to the Oak Ridge Gaseous Diffusion Plant not transferred in paragraph (1) to the Corporation;

"(3) facilities, equipment, and materials for research and development activities related to the isotopic separation of uranium by the gaseous diffusion technology;

"(4) the Department's stocks of preproduced enriched uranium, but excluding stocks of highly enriched uranium: *Provided*, That approximately two metric tons of the Department's highly enriched uranium shall be loaned to the Corporation as required for working inventory;

"(5) the Department's stocks of feed materials for uranium enrichment except for the quantities allocated to the national defense activities of the Department as of the date of enactment;

"(A) the Department's stockpile of enrichment tails existing as of the date of enactment, shall remain with the Department; and

"(B) stocks of feed materials which remain the property of the Department under paragraph (5) shall remain in place at the enrichment plant sites. The Corporation shall have access to and use of these feed materials provided such quantities as are used are replaced, or credit given, if use by the Department is subsequently needed.

"(6) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases to the extent these items concern the Corporation's functions and activities, except those items required for programs and activities of the Department and those items specifically excluded by this subsection.

The transfer authorized by this section is not subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act.

"b. The Secretary is authorized and directed to grant to the Corporation without charge the Department's rights and access to the Atomic Vapor Laser Isotope Separation, hereinafter referred to as 'AVLIS', technology and to provide on a reimbursable basis and at the request of the Corporation, the necessary cooperation and support of the Department to assure the commercial development and deployment of AVLIS or other technologies in a manner consistent with the intent of this title.

"c. The Secretary is authorized and directed to grant the Corporation without charge, to the extent necessary or appropriate for the conduct of the Corporation's activities, licenses to practice or have practiced any inventions or discoveries (whether patented or unpatented) together with the right to use or have used any processes and technical information owned or controlled by the Department.

"d. The Secretary is directed, without need of further appropriation, to transfer to the Corporation the unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable), and accounts receivable which are related to functions and activities acquired by the Corporation from the Department pursuant to this title, including all advance payments.

"e. The President is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real and personal property of the United States which is reasonably related to the functions performed by the Corporation. Such transfers may be made by the President without charge as he may from time to time deem necessary and proper for achieving the purposes of this title.

"f. Title to depleted uranium resulting from the enrichment services provided to the Department by the Corporation shall remain with the Department.

"SEC. 1506. CAPITAL STRUCTURE OF THE CORPORATION.—

"a. Upon commencement of operations of the Corporation, all liabilities then chargeable to unexpended balances of appropriations transferred under section 1505 shall become liabilities of the Corporation.

"b. (1) The Corporation shall issue capital stock representing an equity investment equal to the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1987, modified to reflect continued depreciation and other usual changes that occur up to the date of transfer. The Secretary of the Treasury shall hold such stock for the United States: *Provided*, That all rights and duties pertaining to management of the Corporation shall remain vested in the Administrator as specified in section 1501.

"(2) The capital stock of the Corporation shall not be sold, transferred, or conveyed by the United States unless such disposition is specifically authorized by Federal law enacted after enactment of this title.

"c. The Corporation shall pay into miscellaneous receipts of the Treasury of the United States or such other fund as provided by law, dividends on the capital stock, out of earnings of the Corporation, as a return on the investment represented by such stock. The Corporation shall pay such dividends out of earnings, unless there is an overriding need to retain these funds in furtherance of other corporate functions including but not limited to research and development, capital investments and establishment of cash reserves.

"d. The Corporation shall repay within a twenty-year period the amount of $364,000,000 into miscellaneous receipts of the Treasury of the United States, or such other fund as provided by law with interest on the unpaid balance from the date of enactment of this title at a rate equal to the average yield on twenty-year Government obligations as determined by the Secretary of the Treasury on the date of enactment of this title. The money required to be repaid under this subsection is hereinafter referred to as the 'Initial Debt'.

"e. Receipt by the United States of the stock issued by the Corporation (including all rights appurtenant thereto) together with repayment of the Initial Debt shall constitute the sole recovery by the United States of previously unrecovered costs that have been incurred by the United States for uranium enrichment activities prior to enactment of this title.

"SEC. 1507. BORROWING.—

"a. (1) The Corporation is authorized to issue and sell bonds, notes, and other evidences of indebtedness (hereinafter collectively referred to as 'bonds') in an amount not exceeding $2,500,000,000 outstanding at any one time to assist in financing its activities and to refund such bonds. The principal of and interest on said bonds shall be payable from revenues of the Corporation.

"(2) Notwithstanding any other provision of law, the Corporation may pledge and use its revenues for payment of the principal of and interest on said bonds, for purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve funds and other funds which may be similarly pledged and used, to such extent and in such manner as it may deem necessary or desirable.

"(3) Notwithstanding any other provision of law, the Corporation is authorized to enter into binding covenants with the holders of said bonds—and with the trustee, if any—under any indenture, resolution, or other agreement entered into in connection with the issuance thereof with respect to the establishment of reserve funds and other funds, stipulations concerning the subsequent issuance of bonds, and such other matters, not inconsistent with this title, as the Corporation may deem necessary or desirable to enhance the marketability of said bonds.

"(4) Bonds issued by the Corporation hereunder shall not be obligations of, nor shall payments of the principal thereof or interest thereon be guaranteed by, the United States.

"b. Bonds issued by the Corporation under this section shall be negotiable instruments unless otherwise specified therein, shall be in such forms and denominations, shall be sold at such times and in such amounts, shall mature at such time or times not more than thirty years from their respective dates, shall be sold at such prices, shall bear such rates of interest, may be redeemable before maturity at the option of the Corporation in such manner and at such times and redemption premiums, may be entitled to such priorities of claim on the Corporation's revenues with respect to principal and interest payments, and shall be subject to such other terms and conditions, as the Corporation may determine: *Provided*, That at least fifteen days before selling each issue of bonds hereunder (exclusive of any commitment shorter than one year) the Corporation shall advise the Secretary of the Treasury as to the amount, proposed date of sale, maturities, terms and conditions and expected rates of interest of the proposed issue in the fullest detail possible. The Corporation shall not be subject to the provisions of section 9108 of title 31, United States Code. The Corporation shall be deemed part of an executive department or an independent establishment of the United States for purposes of the provisions of section 78c(c) of title 15, United States Code.

"c. Bonds issued by the Corporation hereunder shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States. The Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the bonds of the Corporation acquired by them under this section: *Provided*, That the Corporation shall not issue or sell any bonds to the Federal Financing Bank.

"SEC. 1508. PRICING.—

"a. For purposes of maximizing the long-term economic value of the Corporation to

the United States Government, the Corporation shall establish prices for its products, materials and services provided to customers other than the Department on a basis that will, over the long term, allow it to recover its costs for providing the products, materials and services; repay the Initial Debt; recover costs of decontamination, decommissioning and remedial action; and attain the normal business objectives of a profitmaking Corporation.

"b. The Corporation shall establish prices for low assay enrichment services and other products, materials, and services provided the Department on a basis that will allow it to recover its costs on a yearly basis for providing such low assay enrichment services, products, materials and services, including depreciation and the cost of decontamination, decommissioning and remedial action, but excluding repayment of the Initial Debt and profit. In establishing such prices, the base charge paid by the Department in any given year shall not exceed the average base charge paid by customers other than the Department: *Provided, however*, That if the imposition of such average base charges as a limitation on the base charge paid by the Department in a given year does not permit the Corporation to fully recover its costs for providing such products, materials and services to the Department then, in subsequent years, the Corporation shall include such unrecovered costs in its prices charged the Department. Base charge shall mean the amount paid by a customer per separative work unit for low assay enrichment services during a given year (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the cost of decontamination and decommissioning and remedial action. The average base charge paid by customers other than the Department shall be determined by dividing the estimated total dollar amount of low assay enrichment services sales to customers other than the Department during a given year by the estimated amount of separative work units sold to customers other than the Department during that year. Adjustments between estimated and actual amounts shall be made upon receipt of actual sales data.

"c. The Corporation shall establish prices to the Department for high assay enrichment services on a basis that will allow it to recover its costs, on a yearly basis, for providing the products, materials or services, including depreciation and the costs of decontamination, decommissioning, and remedial action concerning enrichment property, but excluding repayment of the Initial Debt and profit. If the Department does not request any enrichment services in a given year, the Department shall reimburse the Corporation for costs required to maintain the minimum level of operation of the high assay production facility.

"d. (1) In accordance with the cost responsibilities defined in paragraphs (3) and (4), the Corporation shall recover from its customers in the prices and charges established in accordance with subsection a., amounts that will be sufficient to pay for the costs of decommissioning, decontamination and remedial action for the various property of the Corporation, including property transferred under section 1505 a. at any time. Such costs shall be based on the point in time that such decommissioning, decontamination and remedial action are to be undertaken and accomplished: *Provided*, That by the year 2000 the Corporation shall have recovered and deposited in the Uranium Enrichment Decontamination and Decommissioning Fund 50 per centum of the estimated total costs of decontamination and decommissioning of all property transferred or to be transferred to the Corporation under section 1505, including the Oak Ridge Gaseous Diffusion Plant.

"(2) In order to meet the objective defined in paragraph (1), the Corporation shall periodically estimate the anticipated or actual costs of decommissioning and decontamination. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including, but not limited to, any changes in applicable environmental requirements. Such estimates shall be reviewed at least every two years.

"(3) For purposes of enabling the Corporation to meet the objective defined in paragraph (1) with respect to the Oak Ridge Gaseous Diffusion Plant, the Secretary shall periodically estimate the anticipated costs of decontamination and decommissioning and the time at which such decontamination and decommissioning is to be accomplished. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including but not limited to, any changes in applicable environmental requirements. The Secretary shall review such estimates every two years and convey this information to the Corporation.

"(4) With respect to property that has been used in the production of low-assay separative work,

"(A) The cost of decommissioning, decontamination and remedial action that shall be recoverable from customers other than the Department in prices and charges shall be in the same ratio to the total costs of decommissioning, decontamination and remedial action for the property in question as the production of separative work over the life of such property for commercial customers bears to the total production of separative work over the life of such property.

"(B) All other costs of decommissioning, decontamination and remedial action for such property shall be recovered in prices and charges to the Department.

"(5) With respect to property that has been used solely in the production of high-assay separative work, all costs of decommissioning, decontamination and remedial action shall be recovered in prices and charges to the Department.

"SEC. 1509. AUDITS.—In fiscal years during which an audit is not performed by the Controller General in accordance with the provisions of section 9105 of title 31, United States Code, the financial transactions of the Corporation shall be audited by an independent firm or firms of nationally recognized certified public accountants who shall prepare such audits using standards appropriate for commercial corporate transactions. The fiscal year of the Corporation shall conform to the fiscal year of the United States. The General Accounting Office shall review such audits annually, and to the extent necessary, cause there to be a further examination of the Corporation using standards for commercial corporate transactions. Such audits shall be conducted at the place or places where the accounts of the Corporation are established and maintained. All books, financial records, reports, files, papers, memoranda, and other property of, or in use by, the Corporation shall be made available to the person or persons authorized to conduct audits in accordance with the provisions of this section.

"SEC. 1510. REPORTS.—

"a. The Corporation shall prepare an annual report of its activities. This report shall contain—

"(1) a general description of the Corporation's operations;

"(2) a summary of the Corporation's operating and financial performance, including an explanation of the decision to pay or not pay dividends; and

"(3) copies of audit reports prepared in conformance with section 1509 of this title and the provisions of the Government Corporation Control Act, as amended.

"b. A copy of the annual report shall be provided to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the appropriate committees of the House of Representatives. Such reports shall be completed not later than ninety days following the close of each fiscal year and shall accurately reflect the financial position of the Corporation at fiscal year end, inclusive of any impairment of capital or ability of the Corporation to comply with the provisions of this title.

"SEC. 1511. CONTROL OF INFORMATION.—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such terms appears in section 141 and subsections a. and b. of section 142 of title I.

"b. No contracts or arrangements shall be made, nor any contract continued in effect, under section 1401, 1402, 1403, or 1404, unless the person with whom such contract or arrangement is made, or the contractor or prospective contractor, agrees in writing not to permit any individual to have access to Restricted Data, as defined in section 11 y. of title I, until the Office of Personnel Management shall have made an investigation and report to the Corporation on the character, associations, and loyalty of such individual, and the Corporation shall have determined that permitting such person to have access to restricted data will not endanger the common defense and security.

"c. The restrictions detailed in subsections b., c., d., e., f., g., and h., of section 145 of title I shall be deemed to apply to the Corporation where they refer to the Commission or a majority of the members of the Commission, and to the Administrator where they refer to the General Manager.

"d. The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Corporation's activities. To the extent consistent with the other provisions of this section, the Corporation shall make available to any of such committees all books, financial records, reports, files, papers, memoranda, or other information possessed by the Corporation upon receiving a request for such information from the chairman of such committee.

"e. Whenever the Corporation submits to the President, or the Office of Management and Budget, any budget, legislative recommendation, testimony, or comments on legislation, prepared for submission to the Congress, the Corporation shall concurrently transmit a copy thereof to the appropriate committees of Congress.

"f. The Corporation shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

"SEC. 1512. PATENTS AND INVENTIONS.—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such term appears in section 152 or; 153 b. (1) of title I. The Corporation shall pay such royalty fees for patents licensed to it under section 153 b. (1) of title I as are paid by the Department under that provision. Nothing in title I or this title shall affect the right of the Corporation to require that patents

granted on inventions, that have been conceived or first reduced to practice during the course of research or operations of, or financed by the Corporation, be assigned to the Corporation.

"b. The Department shall notify the Corporation of all reports heretofore or hereafter filed with it under subsection 151 c. of title I and all applications for patents heretofore or hereafter filed with the Commissioner of Patents of which the Department has notice under subsection 151 d. of title I or otherwise, whenever such reports or applications involve matters pertaining to the functions or responsibilities of the Corporation in accordance with this title. The Department shall make all such reports available to the Corporation, and the Commissioner of Patents shall provide the Corporation access to all such applications. All reports and applications to which access is so provided shall be kept in confidence by the Corporation, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress.

"c. The Corporation, without regard for any of the conditions specified in paragraph 153 c. (1), (2), (3), or (4) of title I, may at any time make application to the Department for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent when such patent has not been declared to be affected with the public interest under subsection 153 b. (1) of title I and when use of such patent is within the Corporation's authority. Any such application shall constitute an application under subsection 153 c. of title I subject, except as specified above, to all the provisions of subsections 153 c., d., e., f., g., and h., of title I.

"d. With respect to the Corporation's functions under this title, section 158 of title I shall be deemed to include the Corporation within the phrase, 'any other licensee' in the first sentence thereof and within the phrase 'such licensee' in the second sentence thereof.

"e. The Corporation shall not be liable directly or indirectly for any damages or financial responsibility under section 183 of title 35, United States Code with respect to secrecy orders imposed under section 181 of such title.

"f. The Corporation shall not be liable or responsible for any payments made or awards under subsection 157 b. (3) of title I, or any settlements or judgments involving claims for alleged patent infringement except to the extent that any such awards, settlements or judgments are attributable to activities of the Corporation after the effective date of this title.

"g. The Corporation shall keep currently informed as to matters affecting its rights and responsibilities under chapter 13 of title I as modified by this section and shall take all appropriate action to avail itself of such rights and satisfy such responsibilities. The Department in discharging its responsibilities under chapter 13 of title I shall exercise diligence in informing the Corporation of matters affecting the responsibilities and jurisdiction of the Corporation and seeking and following as appropriate the advice and recommendation of the Corporation in such matters.

"CHAPTER 26. LICENSING, TAXATION, AND MISCELLANEOUS PROVISIONS

"SEC. 1601. LICENSING.—

"a. Notwithstanding any other provision of law, with respect solely to facilities, equipment and materials for activities related to the isotopic separation of uranium by the gaseous diffusion technology at facilities in existence as of the date of enactment of this title, the Corporation and its contractors are hereby exempted from the licensing requirements and prohibitions of sections 57, 62, 81 and other provisions of title I, to the same extent as the Department and its contractors are exempt in regard to the Department's own functions and activities. Such exemption shall remain in effect unless and until the Corporation and its contractors receive all necessary licenses for such facilities, equipment and materials as are required under title I.

"b. Within two years of the enactment of this title, the Commission shall promulgate regulations or issue other regulatory guidance under title I for the licensing of facilities described in subsection (a) that employ the gaseous diffusion technology.

"c. Within one year after the promulgation of regulations or the issuance of other regulatory guidance under subsection (b), the Corporation and its contractors shall make necessary applications for and otherwise seek to obtain such licenses as will remove the exemption provided under subsection (a). As part of its application, the Corporation shall submit an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act. The Commission shall adopt this statement to the extent practicable under the National Environmental Policy Act. In preparing such statement, the Corporation, and in making any licensing decision, the Commission, shall not consider the need for such facilities, alternatives to such facilities, or the costs compared to the benefits of such facilities. The Commission shall act on licensing requests by the Corporation in a timely manner.

"d. The Corporation shall not transfer or deliver any source, special nuclear or byproduct materials or production or utilization facilities, as defined in title I, to any person who is not properly qualified or licensed under the provisions of title I.

"e. The Corporation shall be subject to the regulatory jurisdiction of the Commission and the Department of Transportation with respect to the packaging and transportation of source, special nuclear and byproduct materials.

"SEC. 1602. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.—

"a. In order to render financial assistance to those states and localities in which the facilities of the Corporation are located, the Corporation is authorized and directed beginning in fiscal year 1997 to make payments to state and local governments as provided in this section. Such payments shall be in lieu of any and all state and local taxes on the real and personal property, activities and income of the Corporation. All property of the Corporation, its activities, and income are expressly exempted from taxation in any manner or form by any state, county, or other local government entity. The activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate and maintain its facilities. The income of the Corporation shall include income received by such organizations for the account of the Corporation. The income of the Corporation shall not include income received by such organizations for their own accounts, and such income shall not be exempt from taxation.

"b. Beginning in fiscal year 1997, the corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the state and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making such determinations, the Corporation shall be guided by the following criteria:

"(1) Amounts paid shall not exceed the tax payments that would be made by a private industrial corporation owning similar facilities and engaged in similar activities at the same location: *Provided, however*, That there shall be excluded any amount that would be payable as a tax on net income.

"(2) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

"(3) No amount shall be included to the extent that any tax unfairly discriminates against the class of taxpayers of which the Corporation would be a member if it were a private industrial corporation, compared with other taxpayers or classes of taxpayers.

"(4) Following the commencement of payments in fiscal year 1997, no payment made to any taxing authority for any period shall be less than the payments which would have been made to such taxing authority for the same period by the Department and its cost-type contractors on behalf of the Department with respect to property that has been transferred to the Corporation under section 1505 and which would have been attributable to the ownership, management operation, and maintenance of the Department's uranium enrichment facilities, applying the laws and policies prevailing immediately to the enactment of this title.

"c. Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and payable: *Provided*, That no payment shall be made to the extent that the tax would apply to a period prior to the enactment of this title.

"d. The determination by the Corporation of the amounts due hereunder shall be final and conclusive.

"SEC. 1603. MISCELLANEOUS APPLICABILITY OF TITLE I.—

"a. Any references to the term 'Commission' or to the Department in sections 105 b., 161 c., 161 k., 161 q., 165 a., 221 a., 229, 230 and 232 of title I shall be deemed to include the Corporation.

"b. Section 188 of title I shall apply to licensed facilities of the Corporation. For purposes of applying such section to facilities of the Corporation:

"(1) The term 'Commission' shall be deemed to refer to the Secretary;

"(2) There shall be no requirement for payment of just compensation to the Corporation, and receipts from operation of the facility in question shall continue to accrue to the benefit of the Corporation; and

"(3) The Secretary shall have the discretion to determine how and by whom the facility in question will be operated.

"SEC. 1604. COOPERATION WITH OTHER AGENCIES.—The Corporation is empowered to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Corporation. Further, the Corporation may confer with and avail itself of the coopera-

tion, services, records, and facilities of state, territorial, municipal or other local agencies.

"SEC. 1605. APPLICABILITY OF ANTITRUST LAWS.—

"a. The Corporation shall conduct its activities in a manner consistent with the policies expressed in the antitrust laws, except as required by the public interest.

"b. As used in this subsection, the term 'antitrust laws' means:

"(1) The Act entitled: 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890 (15 U.S.C. 1-7), as amended;

"(2) The Act entitled, 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914 (15 U.S.C. 12-27), as amended;

"(3) Sections 73 and 74 of the Act entitled, 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

"(4) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

"SEC. 1606. NUCLEAR HAZARD INDEMNIFICATION.—The Administrator shall have the same authority to indemnify the contractors of the Corporation as the Secretary has to indemnify contractors under section 170 d. of title I. Except that with respect to any licenses issued to the Corporation by the Commission, the Commission shall treat the Corporation and its contractors as its licensees for the purposes of Section 170 of this Act.

"SEC. 1607. INTENT.—It is hereby declared to be the intent of this title to aid the Corporation in discharging its responsibilities under this title by providing it with adequate authority and administrative flexibility to assure the maximum achievement of the purposes hereof as provided herein, and this title shall be construed liberally to effectuate such intent.

"SEC. 1608. REPORT.—

"a. Three years after enactment of this title the Administrator shall submit to the President and to Congress an interim report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. Five years after enactment of this title, the Administrator shall submit to the President and the Congress a final report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. If the Administrator, in the final report, recommends such transfers, the report shall include a plan for implementation of the transfers.

"b. Within one hundred and eighty days after receipt of the final report under subsection (a), the President shall transmit to Congress his recommendations regarding the report, including a plan for implementation of any transfers recommended by the President and any recommendations for legislation necessary to effectuate such transfers.

"CHAPTER 27. DECONTAMINATION AND DECOMMISSIONING

"SEC. 1701. ESTABLISHMENT.—

"a. ESTABLISHMENT OF FUND.—(1) There is hereby established in the Treasury of the United States an account of the Corporation to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (hereinafter referred to in this chapter as the 'Fund'). In accordance with section 1402(j), such account and any funds deposited therein, shall be available to the Corporation for the exclusive purpose of carrying out the purposes of this chapter.

"(2) The Fund shall consist of:

"(A) Amounts paid into it by the Corporation in accordance with section 1702; and

"(B) Any interest earned under subsection (b)(2).

"b. ADMINISTRATION OF FUND.—(1) The Secretary of the Treasury shall hold the Fund and, after consultation with the Corporation, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

"(2) At the direction of the Corporation, the Secretary of the Treasury shall invest amounts contained within such Fund in obligations of the United States:

"(A) Having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Fund, as determined by the Corporation; and

"(B) Bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to such obligations.

"(3) At the request of the Corporation, the Secretary of the Treasury shall sell such obligations and credit the proceeds to the Fund.

"SEC. 1702. DEPOSITS.—Within sixty days of the end of each fiscal year, the Corporation shall make a payment into the Fund in an amount equal to the costs of decontamination and decommissioning that have been recovered during such fiscal year by the Corporation in its prices and charges established in accordance with section 1508 for products, materials, and services.

"SEC. 1703. PERFORMANCE AND DISBURSEMENTS.—

"a. When the Corporation determines that particular property should be decommissioned or decontaminated, or both, or with respect to the Oak Ridge Gaseous Diffusion Plant at such time as the plant is conveyed to the Corporation, the Corporation shall enter into a contract for the performance of such decommissioning and decontamination.

"b. The Corporation shall pay for the costs of such decommissioning and decontamination out of amounts contained within the Fund.".

SEC. 113. TREATMENT OF THE CORPORATION AS BEING PRIVATELY-OWNED FOR PURPOSES OF THE APPLICABILITY OF ENVIRONMENTAL AND OCCUPATIONAL SAFETY LAWS.—The United States Enrichment Corporation shall be subject to Federal, State, and local environmental laws and the Occupational Safety and Health Act (29 U.S.C. 651-678) to the same extent as is the Department of Energy as of the date of enactment. After four years from the date of enactment of this title, the United States Enrichment Corporation shall become subject to such laws to the same extent as a privately-owned corporation, unless the President determines that additional time is necessary to achieve the purposes of title II of the Atomic Energy Act of 1954, as amended.

SEC. 114. MISCELLANEOUS PROVISIONS.—(a) Section 9101(3) of title 31, United States Code (relating to the definition of "wholly-owned Government corporation") is amended by adding at the end the following: "(N) United States Enrichment Corporation.".

(b) In subsection 41 a. of the Atomic Energy Act of 1954, as amended, the word "or" appearing before the numeral "(2)" is deleted, a semicolon is substituted for a period at the end of the subsection and the following new paragraph is added: "or (3) are owned by the United States Enrichment Corporation.".

(c) In subsection 53 c. (1) of the Atomic Energy Act of 1954, as amended, the word "or" is inserted before the word "grant" and the phrase "or through the provision of production or enrichment services" is deleted in both places where it appears in such subsection.

(d) The Atomic Energy Act of 1954, as amended, is further amended in section 318(1) by striking the period after "activities" and by adding the following:

"(D) any facility owned by the United States Enrichment Corporation.".

(e) Subsection 905(g)(1) of title 2, United States Code, is amended to include "United States Enrichment Corporation" at the end thereof.

(f) Section 306 of title III of the Energy and Water Development Appropriations Act, 1988, Public Law 100-202, is repealed.

SEC. 115. LIMITATION ON EXPENDITURES.—For fiscal year 1991, total expenditures of the United States Enrichment Corporation shall not exceed total receipts.

SEC. 116. SEVERABILITY.—If any provision of this title, or the application of any provision to any entity, person or circumstance, shall for any reason be adjudged by a court of component jurisdiction to be invalid, the remainder of this Act, or the application of the same shall not be thereby affected.

SEC. 117. EFFECTIVE DATE.—Except as otherwise provided, all provisions of this title shall take effect on the day following the end of the first full fiscal year quarter following the enactment of this Act: *Provided, however*, That the Administrator or Acting Administrator of the United States Enrichment Corporation may immediately exercise the management responsibilities and powers of subsection 1501(a) of the Atomic Energy Act of 1954, as amended by this Act.

SEC. 118. PAYMENT OF COST OF TRANSFER.—(a) Notwithstanding section 1401j. of the Atomic Energy Act of 1954 as amended by section 112 of this title, any expense incurred by the Secretary or the Corporation in the course of setting up the Corporation or transferring the property or assets of the Department to the Corporation shall be subject to appropriation.

(b) There are authorized to be appropriated such sums as may be necessary to pay the costs of setting up the Corporation and transferring the property and assets of the Department to the Corporation under this title.

TITLE II

Subtitle A—Short Title, Findings and Purpose, Definitions

This title may be cited as the "Uranium Security and Tailings Reclamation Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds for purposes of this title that—

(1) the United States uranium industry has long been recognized as vital to United States energy independence and as essential to United States national security, but has suffered a drastic economic setback, including a 90 per centum reduction in employment, closure of almost all mines and mills, more than a 75 per centum drop in production, and a permanent loss of uranium reserves;

(2) during the remainder of this century approximately 20 per centum of United States electricity is expected to be produced from uranium fueled powerplants owned by domestic electric utilities;

(3) the United States has been the leading uranium producing nation and holds extensive proven reserves of natural uranium that offer the potential for secure sources of future supply;

(4) a variety of economic factors, policies of foreign governments, foreign export practices, the discovery and development of low cost foreign reserves, new Federal regulatory requirements, and cancellation of nuclear powerplants have caused most United States producers to close or suspend operations over the past six years and have resulted in the domestic uranium industry being found "not viable" by the Secretary under provisions of the Atomic Energy Act of 1954, as amended;

(5) providing assistance to the domestic uranium industry is essential to—

(A) preclude an undue threat from foreign supply disruptions that could hinder the Nation's common defense and security,

(B) assure an adequate long-term supply of domestic uranium for the Nation's nuclear power program to preclude an undue threat from foreign supply disruptions or price controls, and

(C) aid in the Nation's balance-of-trade payments through foreign sales;

(6) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901–7942);

(A) was enacted to provide for the reclamation and regulation of uranium and thorium mill tailings; and

(B) did not provide for a Federal contribution for the reclamation of tailings at uranium and thorium processing sites which were generated pursuant to Federal defense contracts;

(7) the owners or licensees of active uranium and thorium sites and the Federal Government have each benefitted from uranium and thorium produced at the active sites, and it is equitable that they share in the costs of reclamation, decommissioning and other remedial actions at the commingled sites; and,

(8) the creation of an assured system of financing will greatly facilitate and expedite reclamation and remedial actions at active uranium and thorium processing sites.

(b) PURPOSE.—It is the purpose of subtitles B and C of this title to—

(1) ensure an adequate long-term supply of domestic uranium for the Nation's common defense and security and for the Nation's nuclear power program;

(2) provide assistance to the domestic uranium industry; and

(3) establish, facilitate, and expedite a comprehensive system for financing reclamation and other remedial action at active uranium and thorium processing sites.

SEC. 203. DEFINITIONS.

For purposes of this title—

(1) the term "active site" means—

(A) any uranium or thorium processing site, including the mill, containing by-product material for which a license (issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, as amended, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)) for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(B) any other real property or improvement on such real property that is determined by the Commission to be—

(i) in the vicinity of such site; and

(ii) contaminated with residual by-product material;

(2) the term "byproduct material" has the meaning given such term in section 11(e)(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(e)(2));

(3) the term "civilian nuclear power reactor" means any civilian nuclear powerplant required to be licensed under section 103 or section 104 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2133);

(4) the term "Corporation" means the United States Enrichment Corporation established under section 1202 of title II of the Atomic Energy Act of 1954, as amended;

(5) the term "Department" means the Department of Energy;

(6) the term "domestic uranium" means any uranium that has been mined in the United States including uranium recovered from uranium deposits in the United States by underground mining, open-pit mining, strip mining, in situ recovery, leaching, and ion recovery, or recovered from phosphoric acid manufactured in the United States;

(7) the term "domestic uranium producer" means a person or entity who produces domestic uranium and who has, to the extent required by State and Federal agencies having jurisdiction, licenses and permits for the operation, decontamination, decommissioning, and reclamation of sites, structures and equipment;

(8) the term "enrichment tails" means uranium in which the quantity of the U–235 isotope has been depleted in the enrichment process;

(9) the term "reclamation, decommissioning, and other remedial action" includes work, including but not limited to disposal work, accomplished in order to comply with all applicable requirements, including but not limited to those established pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, as amended, or where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021). The term shall also include work at an active site prior to the date of enactment of this act accomplished in order to comply with the foregoing requirements;

(10) the term "Secretary" means the Secretary of Energy;

(11) the terms "source material" and "special nuclear material" have the meaning given such terms in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014); and

(12) the term "tailings" means the wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Subtitle B—Uranium Revitalization

SEC. 210. VOLUNTARY OVERFEED PROGRAM.

(a) The Corporation shall establish, for a period of not less than five years commencing at the beginning of fiscal year 1992, a voluntary overfeeding program which shall be made available to the Corporation's enrichment services customers. The term "overfeeding" means the use of uranium in the enrichment process in excess of the amount required at the transactional tails assay.

(b) The Corporation shall encourage its enrichment services customers to participate in the voluntary overfeeding program as provided in this section. Uranium supplied by the enrichment customer shall be used by the Corporation for voluntary overfeeding in the enrichment process to reduce the amount of power required to produce the enriched uranium ordered by the enrichment services customer. The dollar savings resulting from the reduced power requirements shall be credited to the enrichment services customer.

(c) In the event an enrichment services customer does not elect to provide uranium for voluntary overfeeding to be used to process its enrichment order, the Corporation shall establish a method for such uranium to be voluntarily supplied by other enrichment services customer(s) which have expressed to the Corporation an interest in participating in such a program and the Corporation shall credit the resulting dollar savings realized from the reduced power requirements to the enrichment services customer(s) providing the uranium.

(d) An enrichment services customer providing uranium for voluntary overfeeding shall certify to the Corporation that such uranium is domestic uranium which has been actually produced by a domestic uranium producer after the enactment of this Act or domestic uranium actually produced by a domestic uranium producer before the enactment of this Act and held by it without sale, transfer or redesignation of the origin of such uranium on a DOE/NRC form 741.

(e) Within ninety days of the date of enactment of this Act, the Corporation shall establish procedures to implement this program. Such procedures shall include, but not be limited to, delivery, reporting and certification requirements, and provisions for failure to comply with the requirements of the voluntary overfeeding program. The determination of the voluntary overfeeding credit and sufficient data to support such determination shall be available to the Corporation's enrichment services customers and to qualified domestic producers.

SEC. 211. NATIONAL STRATEGIC URANIUM RESERVE.

There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of 50,000,000 pounds of natural uranium contained in stockpiles or inventories currently held by the United States for defense purposes. Effective on the date of enactment of this Act, use of the Reserve shall be restricted to military purposes and government research. Use of the Department's stockpile of enrichment tails existing on the date of enactment of this Act shall be restricted to military purposes.

SEC. 212. RESPONSIBILITY FOR THE INDUSTRY.

(a) The Secretary shall have a continuing responsibility for the domestic uranium industry, and shall take any action, which he determines to be appropriate under existing law, to encourage the use of domestic uranium: *Provided, however*, That the Secretary, in fulfilling this responsibility, shall not use any supervisory authority over the Corporation. The Secretary shall report annually to the appropriate committees of Congress on action taken with respect to the domestic uranium industry, including action to promote the export of domestic uranium pursuant to paragraph (b) of this section.

(b) ENCOURAGE EXPORT.—The Department, with the cooperation of the Department of Commerce, the United States Trade Representative and other governmental organizations, shall encourage the export of domestic uranium. Within one hundred and eighty days of the date of enactment of this Act the Secretary shall develop recommendations and implement government programs to promote the export of domestic uranium.

SEC. 213. GOVERNMENT URANIUM PURCHASES.

(a) After the date of enactment of this Act, the United States of America, its agencies and instrumentalities, shall only have the authority to enter into contracts or orders for the purchase of uranium which is (1) of domestic origin and (2) is purchased from domestic uranium producers: *Provided*, That this section shall not affect purchases under a contract for delivery of a fixed amount of uranium entered into before the date of enactment of this Act.

(b) Subsection (a) shall not apply to the Tennessee Valley Authority.

SEC. 214. SECRETARY'S AUTHORITY TO MAKE REGULATIONS.

The Secretary shall issue appropriate regulations to implement the purposes of this title.

Subtitle C—Remedial Action for Active Processing Sites

SEC. 220. REMEDIAL ACTION PROGRAM.

(a) IN GENERAL.—Except as provided in subsection (b), the costs of documentation, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity at such site which results or has resulted in the production of byproduct material.

(b) REIMBURSEMENT.—

(1) IN GENERAL.—The Secretary shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) for such portion of the reclamation, decommissioning and other remedial action costs described in such subsection as are—

(A) determined by the Secretary to be attributable to tailings generated as an incident of sales to the United States; and

(B) incurred by such licensee not later than December 31, 2002.

(2) AMOUNT.—

(A) TO INDIVIDUAL ACTIVE SITE URANIUM LICENSEES.—The amount of reimbursement paid to any licensee under paragraph (1) shall be determined by the Secretary in accordance with regulations issued pursuant to section 221 and shall not exceed an amount equal to $4.50 multiplied by the dry short tons of tailings located at the site as of the effective date of this title and generated as an incident of sales to the United States.

(B) TO ALL ACTIVE SITE URANIUM LICENSEES.—Payments made under paragraph (1) to active site uranium licensees shall not in the aggregate exceed $270,000,000.

(C) TO THORIUM LICENSEES.—Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed $30,000,000.

(D) INFLATION ESCALATION INDEX.—The amounts in subsections (A), (B) and (C) of this section shall be increased annually based upon an inflation index. The Secretary shall determine the appropriate index to apply.

(E) ADDITIONAL REIMBURSEMENT.—Provided however, (i) the Secretary shall determine as of July 31, 2005, whether the amount authorized to be appropriated in section 222, when considered with the $4.50 per dry short ton limit on reimbursement, exceeds the total cost reimbursable to the licensees of active sites for reclamation, decommissioning and other remedial action; and (ii) if the Secretary determines there is an excess, the Secretary may allow reimbursement in excess of $4.50 per dry short ton on a pro-rated basis at such sites that reclamation, decommissioning and other remedial action costs for tailings generated as an incident of sales to the United States exceed the $4.50 per dry short ton limitation.

SEC. 221. REGULATIONS.

The Secretary shall issue regulations governing reimbursement under section 220. An active uranium or thorium processing site owner shall apply for reimbursement hereunder by submitting a statement for the amount of reimbursement, together with reasonable documentation in support thereof, to the Secretary. Any such statement for reimbursement, supported by reasonable documentation, shall be approved by the Secretary and reimbursement therefor shall be made in a timely manner subject only to the limitations of section 220.

SEC. 222. AUTHORIZATION.

There is authorized to be appropriated for purposes of this subtitle not more than $300,000,000 increased annually as provided in section 220 based upon an inflation index as determined by the Secretary.

Subtitle D—Imports of Uranium, Enriched Uranium, and Uranium Enrichment Services

SEC. 230. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the domestic uranium industry and the economic viability of the Federal uranium enrichment enterprise may be threatened by exports of uranium and enriched uranium from non-market economy countries at prices which represent less than the cost of producing uranium or enriching uranium; and

(2) the national security and defense interests of the United States require that appropriate actions be taken to assure that the nuclear energy industry in the United States does not become unduly dependent on foreign sources of uranium or uranium enrichment services.

(b) PURPOSES.—The purposes of this subtitle are to—

(1) determine whether any uranium or enriched uranium is being exported by nonmarket economy countries at prices which represent less than the cost of producing such commodities; and

(2) provide for appropriate actions to assure the viability of the domestic uranium industry and the Federal uranium enrichment enterprise in order to protect the national security and defense interests of the United States.

SEC. 231. DEFINITIONS.

For the purposes of this subtitle, the term—

(1) "Administrator" means the Administrator of the Energy Information Administration;

(2) "Federal uranium enrichment enterprise" means the uranium enrichment activities of the Department of Energy or the United States Enrichment Corporation; and

(3) "utility regulatory authority" means any State agency or Federal agency that has ratemaking authority with respect to the sale of electric energy by any electric utility or independent power producer, except that for the purposes of this paragraph, the terms "electric utility", "State agency", "Federal agency", and "ratemaking authority" have the same meanings as the terms have under section 3 of the Public Utility Regulatory Policies Act of 1978.

SEC. 232. UNITED STATES INTERNATIONAL TRADE COMMISSION INVESTIGATION.

(a) Within sixty days after the date of enactment of this subtitle, the United States International Trade Commission, shall initiate an investigation to determine—

(1) the quantities of uranium or enriched uranium being exported from non-market economy countries;

(2) the amount and nature of uranium enrichment services being offered by non-market economy countries; and

(3) whether such uranium, enriched uranium or enrichment services are being offered at prices which represent less than the cost of producing such uranium or enriched uranium or providing such uranium enrichment services.

(b) The Secretary, the Administrator and the Secretary of Commerce shall cooperate fully with the Commission in the investigation and shall furnish them all records, analyses and information in their possession regarding the production costs, sales costs and exports of uranium and enriched uranium, or the provision of uranium enrichment services, by non-market economy countries.

(c)(1) Within one year after the date of enactment of this part and annually thereafter, the Commission shall furnish a report containing the results of the investigation and its determination under paragraph (a)(3) to the President, for the use of the Secretary and Secretary of Commerce, and the Congress.

(2) If the Commission determines that any non-market economy country is exporting uranium or enriched uranium, or providing enrichment services, at prices which represent less than the cost of production, the President, or his designee, within 120 days of receipt of the report from the Commission, shall transmit to the Congress a report on what actions are being taken by the Federal Government to discourage or end such pricing practices, including the status of any negotiations with such country to end such pricing practices.

(d) The Commission shall take such steps as, in its judgment, are necessary, including the classification of information, to assure appropriate protection of any confidential information.

SEC. 233. URANIUM PURCHASES REPORTS.

(a) By January 1 of each year, the owner or operator of any civilian nuclear power reactor shall report to the Secretary, acting through the Administrator, for activities of the previous fiscal year—

(1) the country of origin and the seller of any uranium or enriched uranium purchased or imported into the United States either directly or indirectly by such owner or operator: and

(2) the country of origin and the seller of any enrichment services purchased by such owner or operator.

(b) The information provided to the Secretary pursuant to this section shall be made available to the Committee on Energy and Natural Resources of the United States Senate and appropriate committees of the United States House of Representatives by March 1 of each year.

(c) For the purposes of this section, the term "country of origin" means,

(1) with respect to uranium, that country where the uranium was mined or,

(2) with respect to enriched uranium, that country where the uranium was mined and enriched, or

(3) with respect to enrichment services, that country where the enrichment services were performed.

SEC. 234. REGULATORY TREATMENT OF URANIUM PURCHASES.

(a) The Secretary shall encourage States and utility regulatory authorities to take into consideration the achievement of the objectives and purposes of this subtitle, in-

cluding the national need to avoid dependence on imports, when considering whether to allow the owner or operator of any electric power plant to recover in its rates and charges to customers any cost of purchase of domestic uranium, enriched uranium or enrichment services from a non-affiliated seller greater than the cost of non-domestic uranium, enriched uranium or enrichment services.

(b) Within one year of the date of enactment of this subtitle, and annually thereafter, the Secretary shall report to Congress on his progress in encouraging actions by State regulatory authorities pursuant to subsection (a). Such report shall include detailed information on programs initiated by the Secretary to encourage appropriate State regulatory action and recommendations, if any, on further action that could be taken by the Secretary, other Federal agencies, or the Congress in order to further the purposes of this subtitle.

(c) As used in this section, a seller is "non-affiliated" if it does not control, and is not controlled by or under common control with the buyer.

SEC. 235. UNITED STATES PURCHASE OF ENRICHED URANIUM.

(a) Subject to the limitations of subsection (b), the Secretary or the United States Enrichment Corporation is authorized to purchase enriched uranium from other sources of enriched uranium at prices below the production costs of the Department of Energy or the Corporation, respectively, if such purchases are necessary to reduce production costs and maintain competitive prices.

(b) If enriched uranium purchased by the Secretary or the United States Enrichment Corporation is used to supply enrichment customers, any uranium provided by such customers to the Secretary or the United States Enrichment Corporation as feed material may only be used for rebuilding uranium inventory or for overfeeding purposes.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MAKING CERTAIN TECHNICAL CORRECTIONS IN THE JUDICIAL IMPROVEMENTS ACT OF 1990

Mr. SYMMS. Mr. President, on behalf of Senator THURMOND, I send a bill to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. HARKIN). The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 1284) to make certain technical corrections in the Judicial Improvements Act of 1990.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. THURMOND. Mr. President, I rise today, along with Senator HEFLIN, to introduce a bill that will make certain technical corrections to the Judicial Improvements Act of 1990, which was passed in the last Congress. This bill will correct some technical drafting mistakes in the Judicial Improvements Act to ensure that the act is properly implemented.

I would like to briefly address one particular provision which deals with teaching income for retired judges and justices. Under law, outside earned income for a judge or a justice may not exceed 15 percent of his or her annual salary. In the Judicial Improvements Act of 1990, Congress allowed teaching income to be exempt from the 15-percent cap for retired judges. This bill will extend the same exemption to retired Justices of the U.S. Supreme Court.

Mr. President, this legislation will make certain technical amendments to the Judicial Improvements Act of 1990. I urge my colleagues to support its passage.

The PRESIDING OFFICER. Are there amendments to the bill?

If there are no amendments, the bill is deemed read a third time and passed.

The bill (S. 1284) was passed, as follows:

S. 1284

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JUDICIAL COUNCILS OF CIRCUITS.

Section 332(a)(1) of title 28, United States Code, as amended by section 323 of the Judicial Improvements Act of 1990, is amended by—

(1) striking "such member" and inserting "such number"; and

(2) striking "services" and inserting "service".

SEC. 2. REVIEW OF DISTRICT COURT ACTION.

Section 474(a) of title 28, United States Code, as amended by sections 103 and 474 of the Judicial Improvements Act of 1990, is amended—

(1) in paragraph (1) by striking "court of appeals for such"; and

(2) in paragraph (2) by striking "a court of appeals" and inserting "a circuit".

SEC. 3. VENUE.

Section 1391(b) of title 28, United States Code, as amended by section 311 of the Judicial Improvements Act of 1990, is amended by striking "if (1)" and inserting "in (1)".

SEC. 4. REMOVAL OF SEPARATE AND INDEPENDENT CLAIMS.

Section 1441(c) of title 28, United States Code, as amended by section 312 of the Judicial Improvements Act of 1990, is amended by—

(1) striking the comma after "title"; and

(2) striking "may may" and inserting "may".

SEC. 5. APPEAL OF ABSTENTION DETERMINATIONS UNDER TITLE 11 OF THE UNITED STATES CODE.

Section 305(c) of title 11, United States Code, as amended by section 309 of the Judicial Improvements Act of 1990, is amended by striking "this title" both places it appears and inserting "title 28".

SEC. 6. OUTSIDE EARNED INCOME LIMITATIONS.

Section 502(b) of the Ethics in Government Act of 1978 (5 U.S.C. App. 7 502(b)) as amended by section 601(a) of the Ethics Reform Act of 1989 and section 319 of the Judicial Improvements Act of 1990, is amended to read as follows:

"(b) TEACHING COMPENSATION OF JUSTICES AND JUDGES RETIRED FROM REGULAR ACTIVE SERVICE.—For purposes of the limitation under section 501(a), any compensation for teaching approved under subsection (a)(5) of this section shall not be treated as outside earned income—

"(1) when received by a justice of the United States retired from regular active service under section 371(b) or 372(a) of title 28, United States Code;

"(2) when received by a judge of the United States retired from regular active service under section 371(b) of title 28, United States Code, for teaching performed during any calendar year for which such judge has met the requirements of subsection (f) of section 371 of title 28, United States Code, as certified in accordance with such subsection; or

"(3) when received by a judge of the United States retired from regular active service under section 372(a) of title 28, United States Code.".

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEMICONDUCTOR INTERNATIONAL PROTECTION EXTENSION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 113, S. 909, a bill regarding semiconductor chips.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 909) to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Are there amendments to the bill? If not, the bill is deemed read a third time and passed.

The bill (S. 909) was passed, as follows:

S. 909

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Semiconductor International Protection Extension Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) section 914 of title 17, United States Code, which authorizes the Secretary of Commerce to issue orders extending interim protection under chapter 9 of title 17, United States Code, to mask works fixed in semiconductor chip products and originating in foreign countries that are making good faith efforts and reasonable progress toward providing protection, by treaty or legislation, to mask works of United States nationals, has resulted in substantial and positive legislative developments in foreign countries regarding protection of mask works;

(2) the Secretary of Commerce has determined that most of the industrialized countries of the world are eligible for orders affording interim protection under section 914 of title 17, United States Code;

(3) no multilateral treaty recognizing the protection of mask works has come into force, nor has the United States become bound by any multilateral agreement regarding such protection; and

(4) bilateral and multilateral relationships regarding the protection of mask works should be directed toward the international protection of mask works in an effective, consistent, and harmonious manner, and the existing bilateral authority of the Secretary of Commerce under chapter 9 of title 17, United States Code, should be extended to facilitate the continued development of protection for mask works.

(b) PURPOSES.—The purposes of this Act are—

(1) to extend the period within which the Secretary of Commerce may grant interim protection orders under section 914 of title 17, United States Code, to continue the incentive for the bilateral and multilateral protection of mask works; and

(2) to clarify the Secretary's authority to issue such interim protection orders.

SEC. 3. AUTHORITY TO ISSUE PROTECTION ORDERS.

Section 914 of title 17, United States Code, is amended—

(1) in subsection (a)(1)(B) by inserting "or implementing" after "enacting"; and

(2) in subsection (e) by striking "July 1, 1991" and inserting "July 1, 1995".

SEC. 4. REPORT TO CONGRESS.

Section 914(f)(2) of title 17, United States Code, is amended in the last sentence by striking "July 1, 1990" and inserting "July 1, 1994".

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REMARKS BY THE PRESIDENT AT THE 100 DAYS EVENT

Mr. SYMMS. Mr. President, I ask unanimous consent that a statement by the President of the United States be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the President's statement follows:

Thank you, good evening. Members of the Cabinet, honored guests. Dr. Benjamin Payton of Tuskegee Institute who brings a lifelong commitment to our Historically Black Colleges, welcome. Governor Campbell, Governor Castle. Drew Batavia, winner of the 1988 Distinguished Disabled American Award, welcome to you, sir. To Robert Egger, founder of the D.C. Central Kitchen, and the 60 other Points of Light who are here tonight, your work inspires the Nation. Mayor Hackett of Memphis, Mayor Myric of Charlotte, County Commissioner Klinger, good to see you all again. I see Paul O'Neill, Chairman of ALCOA, a dedicated advocate for educational excellence. And to the rest of this extraordinary gathering—leaders of businesses, veterans groups, associations, volunteer organizations, education partnerships, and all those who make America the land of opportunity, welcome to the White House.

Over the past 30 months, the world has changed at a dramatic pace. America has been called upon to meet one challenge after another. And meet them we did—each and every one of them. From Eastern Europe, to Panama, to the Persian Gulf, our country stands strong as a champion of freedom.

Ninety-eight days ago, I asked Congress to tackle the urgent problems on the home front with the same energy we dedicated to tackling the crisis on the battlefront. I spelled out my domestic priorities, setting out an ambitious agenda founded upon enhancing economic growth, investing in our future, and increasing opportunity for all Americans. I sent to the Congress literally hundreds of recommendations for legislative change. Then I specifically asked that Congress pass just two laws in a hundred days—a comprehensive anti-crime bill, and a transportation bill.

I thought a hundred days was pretty reasonable. It is now clear that neither will be on my desk by Friday. I am disappointed, but frankly I'm not surprised. Tonight I would like to put this all in some perspective. I haven't asked you here to sit through a litany of programs and policies. We have a long list of legislative priorities already before the Congress, awaiting congressional action. I won't repeat that list here tonight. Rather, I'd like to do something different, and describe to you how I personally see the shared strength and promise of America.

It is hard for the American people to understand why a bill to fight crime cannot be enacted in a hundred days; or why Congress can't pass a highway bill in a hundred days. Most Americans believe fear of crime and violence threatens our most basic freedoms—denies us opportunity.

They also believe we must invest in our future—provide an infrastructure for those who come after us. So they don't understand the complications, the inaction, the bickering, particularly when so many do understand what it takes to solve problems in their own neighborhoods: commitment, compassion, and courage.

I cannot fully explain this inaction to the American people. As I said, I'm disappointed, but not surprised. But I can say this as partial consolation: America's problem-solving does not begin or end with the Congress.

Yes, it would help if Congress would do what the people are asking of them. I'll keep working with the Congress—my hand remains extended. But we cannot let Congress discourage or deter us from meeting our responsibilities.

I believe the people gathered here tonight, under the twilight shadow of Washington's Monument, understand this better than most. You are extraordinary Americans, representing thousands of others. You bring to life the genius of the American spirit, and it is through you and with you that we can solve our most pressing problems. Together we can transform America, and create whole and good communities everywhere. Tonight, all Americans can help lead the way.

A great nation has the courage to be honest about itself. And we are a great nation. I believe that absolutely, as do you. We are indisputably the world's most powerful force for freedom and economic growth. Still, no one can deny that we have enormous challenges. Not all Americans are living the American Dream. Many can't even imagine it.

There are impoverished Americans, the poor and the homeless, the hungry and the hopeless, many unable to read and write. There are Americans gone astray, the kids dragged down by drugs, the shattered families, the teenage mothers struggling to cope. Then there are Americans uneasy, troubled and bewildered by the dizzying pace of change.

For many years I have crisscrossed this Nation. As President, part of my job is going to small towns and big cities, schools, neighborhoods and factories. Those are the places where you discover what's good and right about our country, and what's going wrong, too.

The state of our Nation is the state of our communities. As our communities flourish, our Nation will flourish. So we must seek a nation of whole communities, a nation of good communities—an America, Whole and Good.

What defines such a community? First, it is one that cares for the needs of its young people by building character, values and good habits for life. Second, it's a community that provides excellent schools—schools that spark a lifelong interest in learning. Next, there is opportunity and hope rooted in the dignity of work, and reward for achievement. Fourth, it's where people care about their health and their environment, and where a sense of well-being and belonging is nurtured. Finally, all of its neighborhoods are decent and safe.

Because millions of Americans have chosen to lead the way, these are not just dreams. Thousands of whole and good communities already flourish in America—communities where ordinary people have achieved the American Dream. We should never lose sight of that. America is the most prosperous, productive, enlightened Nation on Earth—a nation that can do anything. And we can do even better.

We should be confident about what lies ahead. America has a track record of success—success shaped with our own hands. Sometimes, in our impatience, we've made mistakes, but when we do, we dust ourselves off, and go at it again. Every American should take pride in this country's fundamental goodness. Each of us must resolve in our own hearts that for all the good we've done, it's time to do better, much, much better.

Conventional wisdom in our day once held that all solutions were in the hands of government: call in the best and brightest and hand over the keys to the national treasury; bigger government was better government; compassion measured in dollars and cents; progress by price tag. We tried that course. As we ended the 70's—our economy strangling on inflation, soaring interest rates, and unemployment—America turned away from government as "the answer."

So conventional wisdom then turned to the genius of the free market. We began a decade of exceptional economic growth and created 20 million new jobs. Yet, many of our streets are still not safe, our schools have lost their edge, and millions still trudge the path of poverty. There is more to be done, and the marketplace alone can't solve all our problems.

Is the harsh lesson that there must always be those who are left behind? America must have but one answer. That answer is No. There is a better way, one that combines our efforts—those of a government properly defined, the marketplace properly understood, and service to others properly engaged. This is the only way to an America Whole and Good.

It requires all three forces of our national life. First, it requires the power of the free market; second, a competent, compassionate government; third, the ethic of serving others—including what I call Points of Light. These three powerful forces create the conditions for communities to be whole and good, and it's time we harnessed all three of them.

In our complex democracy, power is fragmented. That can be frustrating. But on balance it's for the good. And power tends to move toward those who serve the greater good: entrepreneurs, like John Bryant, a young self-starter who has built a multi-million dollar enterprise and now helps rebuild inner city Los Angeles; caring individuals like Mack Stolarski, a retired carpenter who now helps his student apprentices repair homes for the poor and disabled.

And because of the power of the free market, what so much of the world can only imagine, we take for granted: abundant food on the shelves of our supermarkets, and quality products at our shopping centers. Nothing beats the free market at generating jobs, income, wealth, and a better quality of life.

The good news in communities is that the free market is now applying its resources and know-how to our social problems. Many companies, recognizing that tomorrow's workers are today's students, are leaders of a revolution in American education—partners in our exciting America 2000 strategy. Others are crusaders for environmental protection, while still others are innovators from health care to child care.

Transforming America requires not only the power of the free market, but also a dynamic government. To be the enlightened instrument of the people—the government of Jefferson and Lincoln and Roosevelt—and the embodiment of their vision—it must truly be a force for good.

I believe in this kind of government—a government of compassion and competence. And I believe in backing it up with action. Here tonight, for example, is Mrs. Lauren Jackson-Floyd, one of the first Head Start graduates. Now she teaches preschoolers in that same marvelous program. Her success is why we expanded Head Start by almost three quarters of a billion dollars. And last year I signed our child care bill to expand parents' choices in caring for their children.

We fought for a Clean Air Act that puts the free market in the service of the environment, and we won. The Americans with Disabilities Act, the most important Civil Rights Bill in decades, has brought new dignity and opportunity to our Nation's disabled—disability leaders like Justin Dart and Evan Kemp were right here when I signed it.

Jack Kemp and I stood with Ramona Younger in Charles Houston Community Center in Alexandria, Virginia—if the Congress enacts our HOPE Initiative, these public housing tenants can become America's newest homeowners. Dewey Stokes here, President of the Fraternal Order of Police, wants to help make our neighborhoods safer—that's why he supports our crime bill. And if we get a civil rights bill like the one I sent to the Congress, we will take an important step against discrimination in the workplace.

This is not big government—this is good government.

Finally, along with the forces of the free market and the Government, we must add the ethic of voluntary service—Points of Light. That is not a phrase about charity. It is about the light that is within us all. A light that brightens the lives of others and makes whole the lives of those who shine it. As the verse of Randy Travis' song says, "a ray of hope in the darkest night."

Points of Light is a call to every American to serve another in need. But no one of us can solve big problems like poverty or drug abuse by ourselves. Only the combined light from every school, every business, place of worship, club, group, and organization in every community can dissolve the darkness.

Whether a company holds an after-hours literacy program for its workers, a police station counsels tough kids, or third graders phone lonely homebound senior citizens, Points of Light show those in need that their lives matter.

Government, and the market, joined with Points of Light, will overwhelm our social problems. This is how we must guarantee the next American Century. Every person, every business, every school board—our associations, our clubs, our places of worship—we all have the duty to lead.

Only then, can we truly think and act anew. Now Congress, too, must understand the successes and failures of the past and help us forge a certain future for America.

The people gathered here tonight represent those who refuse to rest easy. I look out and see so much reflected in your faces—the strength, the conviction, the commitment. You represent those millions of Americans who use power to achieve a greater good. I know, because you've brought me into your homes and your neighborhoods, your schools and your churches.

Last year I walked through a reclaimed crackhouse in Kansas City with Al Brooks, the leader of an anti-crime coalition. I learned more about how we can fight crime in 2 hours than in 2 months of TV news.

Another day I visited D.C. General Hospital, and held a tiny boarder baby in my arms, the child of a cocaine addict. The remarkable dedication of the women who rescued these babies was just as moving. America needs to hear that story, too.

Just a few months ago, I dropped in on a little West Virginia school in a town called Slanesville. The National Teacher of the Year teaches remedial reading there. Her name is Rae Ellen McKee and she's here tonight. Visiting her gave me the opportunity to say to the Nation, "thank God for our teachers."

Just yesterday I spoke before the graduating class of the James H. Groves Adult High School in Sussex County, Delaware. I invited the class to join us tonight. I went there with Governor Castle to honor these men and women who had the courage to go back to school and get their diplomas. They honored us by telling America to be a nation dedicated to lifelong learning.

These are the Americans who love this country for what it is and for what it can become. These are the Americans who make this a nation of boldness—filled with problem solvers—gifted with the American tradition of living up to our ideals. These are the

Americans who prove that no one in America is without a gift to give, a skill to share, a hand to offer.

This is the genius of America—ordinary Americans doing extraordinary things.

The Congress can refer our proposals to its hundreds of committees, tie itself up with debate, and produce complicated, expensive, unworkable legislation. But in the end, we must carry forward the magic of America. We must carry forward what is good, and reach out and embrace what is best. We must do the hard work of freedom. I know you have. I know you will. Through you, our country can become an America Whole and Good. For that our country is grateful, and because of that our country will prevail.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 5:14 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2038. An act to authorize appropriations for fiscal year 1992 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; and

H.R. 2123. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act to establish a predictable and equitable method for determining the amount of the annual Federal payment to the District of Columbia.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 142. A concurrent resolution extending an invitation to the International Olympic Committee to hold the 1998 winter Olympic games in Salt Lake City, UT, and pledging the cooperation and support of the Congress of the United States.

ENROLLED JOINT RESOLUTION SIGNED

At 7:47 p.m., a message from the House of Representatives announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 91. Joint resolution designating June 10 through 16, 1991, as "Pediatric AIDS Awareness Week."

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2038. An act to authorize appropriations for fiscal year 1992 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; to the Select Committee on Intelligence.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The PRESIDENT pro tempore (Mr. BYRD) announced that on yesterday, June 11, 1991, during the recess of the Senate, he had signed the following enrolled bills and joint resolution, which had previously been signed by the Speaker of the House:

S. 292. An act to expand the boundaries of the Saguaro National Monument;

S. 483. An act entitled the "Taconic Mountains Protection Act of 1991"; and

H.J. Res. 219. Joint resolution to designate the week beginning June 9, 1991, as "National Scleroderma Awareness Week".

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, June 12, 1991, he had presented to the President of the United States the following enrolled bills:

S. 292. An act to expand the boundaries of the Saguaro National Monument; and

S. 483. An act entitled the "Taconic Mountains Protection Act of 1991".

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1375. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend title 5, United States Code, to provide a remote maintenance allowance to certain officers and employees of the United States assigned to Johnston Island; to the Committee on Governmental Affairs.

EC-1376. A communication from the Chairman of the Equal Employment Opportunity Commission, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Equal Employment Opportunity Commission, for the period October 1, 1990, to March 31, 1991 to the Committee on Governmental Affairs.

EC-1377. A communication from the Secretary of Energy, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Energy, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1378. A communication from the Chairman of the National Labor Relations Board, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, National Labor Relations Board, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1379. A communication from the Chairman of the Oversight Board of the Resolution Trust Corporation and the Chairman of the Resolutions Trust Corporation, transmitting jointly, pursuant to law, the semiannual report of the Office of Inspector General, Resolution Trust Corporation, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1380. A communication from the Director of the United States Information Agency, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, United States Information Agency, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1381. A communication from the Chairman of the National Science Board, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, National Science Board, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1382. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Housing and Urban Development, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1383. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the semiannual report on audit resolution followup activity for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1384. A communication from the Secretary of Labor, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Labor, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1385. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Federal Emergency Management Agency, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1386. A communication from the Chairman of the PCA Retirement Plan, Federal Intermediate Credit Bank of Jackson, transmitting, pursuant to law, the annual pension plan report of the Production Credit Associations Retirement Plan for the plan year ended December 31, 1990; to the Committee on Governmental Affairs.

EC-1387. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for the calendar year 1990; to the Committee on Governmental Affairs.

EC-1388. A communication from the Secretary of Education, transmitting, pursuant to law, the semiannual report on audit followup for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1389. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Annual Audit of the Boxing and Wrestling Commission for Fiscal Year 1990"; to the Committee on Governmental Affairs.

EC-1390. A communication from the Director of the Federal Domestic Volunteer Agen-

cy, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Federal Domestic Volunteer Agency, and the semiannual report on audit followup for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1391. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Securities and Exchange Commission, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1392. A communication from the Secretary of Commerce, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Commerce, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1393. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Office of Personnel Management, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1394. A communication from the Director of the Office of Government Ethics, transmitting a draft of proposed legislation to amend section 202 of title 18, United States Code, to provide for Presidential waiver authority of certain conflict of interest statutes; to the Committee on Governmental Affairs.

EC-1395. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Health and Human Services, for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1396. A communication from the Administrator of General Services, transmitting, pursuant to law, the semiannual report on audit followup for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1397. A communication from the Secretary of Transportation, transmitting, pursuant to law, the semiannual report on audit followup for the period October 1, 1990, to March 31, 1991; to the Committee on Governmental Affairs.

EC-1398. A communication from the President of the Foundation of the Federal Bar Association, transmitting, pursuant to law, the annual audit report of the Association for fiscal year 1990; to the Committee on the Judiciary.

EC-1399. A communication from the Director of the Administrative Office of the United States Courts, transmitting, pursuant to law, the 1990 annual report of the Director of the Administrative Office of the United States Courts and the March and September proceedings of the Judicial Conference of the United States held in 1990; to the Committee on the Judiciary.

EC-1400. A communication from the Chairman of the National Endowment for the Humanities, transmitting, pursuant to law, the annual report of the Endowment for 1990; to the Committee on Labor and Human Resources.

EC-1401. A communication from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to extend and amend programs under the Older Americans Act of 1965, and for other purposes; to the Committee on Labor and Human Resources.

EC-1402. A communication from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to extend the authorizations of appropriations for certain youth programs under the Anti-Drug Abuse Act of 1988; to the Committee on Labor and Human Resources.

EC-1403. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report on the administration of Black Lung benefits for calendar year 1989; to the Committee on Labor and Human Resources.

EC-1404. A communication from the Secretary of the Treasury, transmitting a draft of proposed legislation to improve the supervision and regulation with respect to financial safety and soundness of the Student Laon Marketing Association, and for other purposes; to the Committee on Labor and Human Resources.

EC-1405. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to authorize the Secretary of Veterans Affairs to remove any restrictions and conditions on land conveyed by the VA to Temple Junior College, Temple, TX; to the Committee on Veterans' Affairs.

EC-1406. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the report on the administration of the Montgomery GI bill education assistance program for the period October 1, 1989, to September 30, 1990; to the Committee on Veterans' Affairs.

EC-1407. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to improve the housing loan program for veterans by reducing administrative regulation, enhancing the financial solvency of such program, and for other purposes; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Appropriations, with amendments:

H.R. 2427: A bill making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes (Rept. No. 102-80).

By Mr. REID, from the Committee on Appropriations, with amendments:

H.R. 2506: A bill making appropriations for the legislative branch for the fiscal year ending September 30, 1992, and for other purposes (Rept. No. 102-81).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources:

Mike Hayden, of Kansas, to be Assistant Secretary for Fish and Wildlife, Department of the Interior.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

James R. Whelan, of Virginia, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 30, 1994; and

Christopher D. Coursen, of Maryland, to be a Member of the Advisory Board for Cuba Broadcasting for a term expiring October 27, 1993.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1277. A bill to improve the public safety and quality of marine recreational waters; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG (for himself, Mr. DURENBERGER, Mr. BURDICK, and Mr. CHAFEE):

S. 1278. A bill to authorize appropriations for the Office of Environmental Quality for fiscal years 1992, 1993, and 1994, and for other purposes; to the Committee on Environment and Public Works.

By Mr. CRANSTON (by request):

S. 1279. A bill to amend title 38, United States Code, to eliminate duplication and inconsistency in VA programs for furnishing veterans with medical, therapeutic, rehabilitative, and prosthetic devices, appliances, equipment, and services; to the Committee on Veterans' Affairs.

S. 1280. A bill to amend title 38, United States Code, to improve the management of the Veterans Canteen Service; to the Committee on Veterans' Affairs.

By Mr. RIEGLE:

S. 1281. A bill to provide for immediate delivery of United States Savings Bonds available to the public at the point of purchase; to the Committee on Finance.

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 1282. A bill to improve the supervision and regulation with respect to financial safety and soundness of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; to enhance the safety and soundness of the Farm Credit System; and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BUMPERS (for himself and Mr. PRYOR):

S. 1283. A bill to authorize extensions of time limitations in certain FERC-issued licenses; to the Committee on Energy and Natural Resources.

By Mr. SYMMS (for Mr. THURMOND (for himself and Mr. HEFLIN)):

S. 1284. A bill to make certain technical corrections in the Judicial Improvements Act of 1990; considered and passed.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1277. A bill to improve the public safety and quality of marine recreational waters; to the Committee on Environment and Public Works.

BEACHES ENVIRONMENTAL ASSESSMENT, CLOSURE, AND HEALTH ACT

• Mr. LAUTENBERG. Mr. President, I rise to introduce the Beaches Environmental Assessment, Closure and Health [BEACH] Act of 1991. I am pleased to be joined by my colleague, Senator BRADLEY. It is similar to legislation introduced in the other body by Congressman BILL HUGHES. The bill will ensure the safety and beauty of coastal beaches across the country by establishing uniform testing and monitoring procedures for pathogens and floatables in marine recreation waters. This bill also requires EPA to establish a nationwide public health standard for determining when States should notify the public of health risks due to pathogen contaminated waters.

Coastal tourism generates billions of dollars every year for local communities nationwide. More than that, our coastal areas provide immeasurable benefits for millions of Americans who want to build sand castles, cool off in the water, take a walk with that special someone, or just relax. In New Jersey, our very important tourism industry relies primarily on the marine environment. In 1989 over 5.7 million people came to spend time on the Jersey shore and spent over $7.5 billion doing it.

Mr. President, we need new uniform Federal criteria for protecting public health at recreational beaches. Swimming in pathogen contaminated coastal waters can cause a number of illnesses including gastroenteritis, hepatitis, and skin and ear infections. According to the Office of Technology Assessment's 1987 report, Wastes in Marine Environments:

> Bathing in sewage-impacted waters is responsible for relatively high rates of gastrointestinal illness in the United States.

The OTA report concludes that the number of outbreaks of water-borne disease has been steadily increasing in recent decades. It also notes that techniques to measure marine water quality probably underestimate the true number of viable pathogens that are entering the marine environment.

EPA must develop new standards because existing EPA guidelines simply fall short. When states use the Federal guidelines, they decide whether their beach waters are safe for swimming based on monthly averages. Waters may appear safe in the long term, but short-term violations of the public health standard go unrecognized.

The Federal guidelines are not useful for decisionmakers who need to decide whether they should allow people to swim at the beach tomorrow or the coming weekend. Using monthly water quality averages to determine if the beach is safe for swimming is like taking a patient's temperature average over a week to see if she is sick. Her average temperature could be just about normal. But in the meantime, she could be dead.

While some States still use the Federal guidelines, others have no monitoring or water quality notification program at all. A draft survey conducted in the fall of 1989 by the New Jersey Department of Health shows that of 23 States and territories surveyed, 8 have no structured statewide water quality monitoring programs; 11 do not have established criteria for determining bathing beach closures and reopenings due to unsatisfactory microbiological water quality; and, 14 do not proactively disseminate water quality information to the general public.

A recent Recreational Beach Closure Study by the Natural Resources Defense Counsel [NRDC] found that a high bacteria level can cause a beach closure in one State while in another State people may be allowed to swim in the water despite equal health risks. This discrepancy among coastal States threatens public health.

The NRDC report contains other important findings:

High levels of bacteria in coastal waters are responsible for the overwhelming majority of beach closures in the United States.

There were 764 beach closures in 1989 in just 10 States reviewed by NRDC.

The EPA recommended guidelines for waters considered safe would result in 19 out of every 1,000 swimmers becoming sick with gastroenteritis.

The guidelines established by the World Health Organization are more stringent than those of the United States.

New Jersey has been aggressive when it comes to protecting public health at the beach. When there have been signs that our beach waters may be unsafe, we have closed our beaches. Other States haven't acted as swiftly or as honestly. Ironically, New Jersey suffers because it does more to protect public health. In some years, annual losses from beach closures in New Jersey have ranged from $800 million to $1 billion.

Mr. President, I introduced a similar bill last Congress because there are currently no minimum public health standards to protect the public from polluted beach waters, and because the lack of minimum nationwide beach water quality standards presents a threat to public health.

Whether they're in the Carolinas, California, New Jersey, or New York, people across the country have a right to know when the water is and is not safe to swim in. Beachgoers should be able to wade or swim in the surf without the fear of getting sick. Going to the beach should be a healthy and rejuvenating experience. A day at the beach shouldn't be followed by a day with the doctor.

It is clear that we need nationwide beach water quality standards to protect public health from pathogen contaminated waters at beaches. This bill will make sure that need is met.

This bill requires the EPA to establish procedures to monitor coastal waters to detect short-term increases in pathogenicity and to set minimum standards to protect the public from pathogen contaminated beach waters. And it will assure that the public is notified when beach waters exceed the standards. Under my bill, when a standard is violated States are required to notify local officials and post signs at beaches to inform the public of the violation and any associated health risks.

I am also concerned that the bacterial indicators recommended by EPA and those used by many States are inadequate and that they do not tell us about the risks to public health. New Jersey is conducting research to see if it can find better ways to measure public health risks from pathogens in marine waters. But more needs to be done. My bill will allow us to build upon existing efforts and to find better indicators to protect public health.

This legislation provides funding to support implementation of the program through a small set-aside from State grants under section 106 of the Clean Water Act.

Mr. President, the bill I am introducing today was approved by the Environment Committee last year.

Mr. President, I urge my colleagues to join me and Senator BRADLEY in recognizing the importance of protecting public health at our Nation's beaches and cosponsor this legislation.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1277

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Beaches Environmental Assessment, Closure, and Health Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Nation's beaches are a valuable public resource used for recreation by millions of people annually;

(2) the beaches of coastal States are hosts to many out-of-State and international visitors;

(3) tourism in the coastal zone generates billions of dollars annually;

(4) as of the year 2000, as much as 80 percent of the Nation's population may be living within 50 miles of the coast;

(5) increased population has contributed to the decline in the environmental quality of coastal waters;

(6) pollution in coastal waters is not restricted by State and other political boundaries;

(7) each coastal State has its own method of testing the quality of its coastal recreation waters, providing varying degrees of protection to the public; and

(8) the development of implementation of procedures for monitoring the quality of coastal recreational waters and the posting of signs at beaches notifying the public during periods when public health and safety limits and conditions are exceeded would enhance public health and safety.

SEC. 3. COASTAL BEACH QUALITY.

Title IV of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:

"COASTAL BEACH QUALITY

"SEC. 407. (a)(1) Within eighteen months of the date of enactment of this section, each State adjoining any coastal waters shall submit to the Administrator an inventory of coastal recreation waters within such State.

"(2) The inventory required by this subsection shall identify coastal recreation waters within such State, including at a minimum, coastal waters adjacent to public beaches or swimming areas.

"(3) The inventory shall include a statement and description of coastal waters within such State designated for swimming, bathing, or body contact recreation in standards developed pursuant to section 303 of this Act.

"(4) Each State shall provide for public review and comment on the inventory required pursuant to this subsection and, at a minimum, shall provide for at least one public hearing on the draft inventory.

"(5) The Administrator shall approve the inventory prepared pursuant to this section if the Administrator determines that such inventory is consistent with the requirements of this subsection.

"(6) In a case where a State does not submit an inventory pursuant to this subsection, or such inventory is not approved, the Administrator shall designate coastal recreation waters within such State as soon as practicable, but not later than thirty months from the date of enactment of this section. The Administrator shall provide for public review and comment on the designation of coastal recreation waters and shall provide for at least one public hearing within such State.

"(b)(1) Within twenty-four months of the date of enactment of this section, the Administrator shall publish regulations to protect the health and safety of persons swimming, bathing, or engaged in other body contact activities in coastal recreation waters identified pursuant to subsection (a) of this section consistent with paragraph (2) of this subsection.

"(2)(A) Regulations published pursuant to this subsection shall establish, using the best available scientific information, numerical limits for water pollutants determined by the Administrator to pose a threat to public health and safety as a result of swimming, bathing, or other body contact activities. Numerical limits pursuant to this paragraph shall be sufficient to protect public health and safety as a result of any reasonably anticipated exposure to pollutants in coastal recreational waters. At a minimum, the Administrator shall establish a numerical limit for an indicator of the presence of pathogens in water, using the most accurate available indicator.

"(B) In addition to establishing numerical limits for pollutants in water pursuant to subparagraph (A), the Administrator shall establish uniform assessment and monitoring procedures for floatable materials in water and specify the conditions under which the presence of floatable materials shall constitute a threat to public health and safety.

"(3) Regulations published pursuant to this subsection shall specify methods and other requirements for monitoring of coastal recreation waters to determine compliance with numerical limits and conditions established pursuant to paragraph (2) and shall require States to conduct such monitoring. Monitoring requirements established pursuant to this paragraph shall, at a minimum—

"(A) specify the frequency of monitoring based on the periods of recreational use of such waters;

"(B) specify the frequency of monitoring based on the extent and degree of use during such periods;

"(C) specify the frequency of monitoring based on the proximity of coastal recreation waters to pollution sources; and

"(D) specify methods for detecting short-term increases in pollutants identified pursuant to paragraph (2).

"(4)(A) Regulations established pursuant to this subsection shall require States to notify local governments and the public of any violations of numerical limits or conditions established pursuant to paragraph (2). Notification pursuant to this paragraph shall include, at a minimum—

"(i) prompt communication to a designated official of a local government having jurisdiction over land adjoining coastal recreation waters in which a violation pursuant to this paragraph is identified of the occurrence, nature, and extent of such violation;

"(ii) posting of signs, for the period during which the violation continues, sufficient to give notice to the public of violation of public health and safety standards by such waters and the potential risks associated with body contact recreation in such waters; and

"(iii) in the case of any significant violation, notice by general circulation newspaper serving the area in which the violation occurs and a press release to electronic media providing a clear and readily understandable explanation of the violation and the potential risks associated with body contact recreation in such waters.

"(B) Regulations established pursuant to this subsection shall include a definition of 'significant violation' which reflects the degree of violation of numerical limits or conditions established pursuant to paragraph (2), the length of the violation, and the number of people potentially exposed to waters in violation.

"(5) The Administrator shall review and revise regulations published pursuant to this subsection periodically.

"(c) For the purposes of this section the term 'coastal recreational waters' refers to coastal waters commonly used by the public for swimming, bathing, or other similar body contact purposes.

"(d)(1) In the case of a State required to develop an inventory and implement regulations under this section, the Administrator shall reserve each fiscal year 5 per centum of the sums allotted and available for obligation to each such State under section 106 of this Act, or $100,000, whichever amount is the greater, for the purposes of conducting or revising the inventory pursuant to subsection (a) of this section and implementing regulations pursuant to subsection (b) of this section.

"(2) In a case where the Administrator determines that a State can effectively implement the program required pursuant to this section for an amount less than 5 per centum of such sums, the Administrator may reserve less than 5 per centum of such funds.

"(3) In a case where the Administrator determines that a State is not complying with regulations issued pursuant to this section, the Administrator shall withhold 5 per centum of the sums allotted and available for obligation under section 106 of this Act, or $100,000, whichever amount is the greater. Sums withheld under this paragraph shall be reallotted among States complying with regulations issued pursuant to this section and States not covered by this section.

"(4) Each State implementing a program under this section shall provide to the Administrator an annual report on the actions taken to implement the program, violations identified, and the number and type of notifications provided pursuant to this section.

"(e) Not later than 5 years after the date of enactment of this section and biennially thereafter, the Administrator shall provide a report to the Congress which shall—

"(1) describe the number and type of violations of numerical limits and conditions and the number and type of notification actions;

"(2) describe the amount and extent of floatable materials in coastal recreation waters and the trends in the amount and location of such materials;

"(3) provide an evaluation of the State activities to implement this section; and

"(4) make recommendations concerning the need for additional numerical limits or conditions pursuant to subparagraph (b)(2) and other actions needed to improve the program pursuant to this section.

"(f)(1) The Administrator, in cooperation with the Under Secretary, shall conduct a study to provide additional information to the current base of knowledge regarding indicators for detecting in coastal recreation waters the presence of bacteria and virus which are harmful to human health.

"(2) The Administrator shall provide a report of the findings of such study to the Congress within 3 years of the date of enactment of this section.

"(g) There is authorized to be appropriated to the Administrator of the Environmental Protection Agency not to exceed $1,000,000 for each of the fiscal years 1992–1997 for the administration of this section.".●

● Mr. BRADLEY. Mr. President, I rise today to join my colleague Senator LAUTENBERG in introducing the Environmental Assessment, Closure, and Health Act of 1991. I am cosponsoring this legislation because it will reduce the chances that Americans are needlessly exposed to unsafe water at the beach. Americans face hazards enough at home and at work. We must do all we can to ensure that citizens are not exposed to unnecessary risks when on vacation as well. This legislation will help achieve that goal.

Vacationers at the beach, enjoying a few days off should not have to wonder whether the water in which they and their families are swimming could make them sick. They should know that the water is safe. This certainty can only come from a rigorous water quality testing program, and a willing-

ness to tell the public when the water may be unsafe. This legislation would ensure that the water testing programs and beach closing rules nationwide are up to the task.

Every summer, I walk the beaches of New Jersey, and I talk to the people I meet about their concerns. New Jerseyans are worried about their beaches and worried about the safety of the waters in which they and their children swim. Yet New Jersey's rules for testing coastal waters are more stringent than currently required by the EPA. When New Jersey's beaches are open, the water is safe. New Jersey has a comprehensive, effective water testing program. New Jersey does not flinch from its responsibilities to close beaches when, as sometimes happens, it may be unsafe to swim.

Some States are not so forthcoming. Some States do not test coastal waters well enough or frequently enough to ensure that residents and visitors are protected from disease. I am proud to say that New Jersey has gone to great lengths to ensure safety.

Mr. President, I think of this legislation as basic consumer information. As things now stand, each State runs its water testing program in a different way. Information on coastal water quality from the different testing programs can be difficult to make sense of or to compare, even for specialists. This legislation, and the companion measure introduced in the House by Representative HUGHES, will ensure that testing programs in coastal areas nationwide are similar. National testing guidelines and national beach closure standards will make readily comparable information on water quality available to beachgoers. For the first time, Americans will be able to determine which beaches have real problems with dangerous pollution, and they will be able to compare beaches to determine which are the safest.

New Jersey beaches have nothing to fear from these comparisons. New Jersey has, I believe, one of the most effective water testing programs in the Nation. New Jersey tests its water on a weekly basis. Many States test their water less frequently, or average the results of repeated tests, thus obscuring short term, intermittent or weather-dependent contamination. In New Jersey we find out about the short term pollution problems, and we take steps to protect people from possible health risks.

Mr. President, some will complain that rigorous testing will do nothing to clean the water. I think that view is shortsighted. To reduce the contamination of our coastal waters we must know the dimensions of the problem. Where are our beach waters unsafe? When do the unsafe conditions occur? Answers to those questions can be used, as they already have been in New Jersey, to track down pollution sources and eliminate them. Furthermore, these naysayers underestimate the power of publicity. If a beach is closed because of polluted water, or if people stop visiting the beach because of reports that the water is unsafe, efforts to find and eliminate the sources of pollution will redouble. And that is what this legislation is really about: cleaning our beaches, eliminating water pollution, and protecting Americans. The stringent testing and pollution guidelines that will result from the passage of this legislation will lead to real improvement in water quality at the beach.•

By Mr. LAUTENBERG (for himself, Mr. DURENBERGER, Mr. BURDICK, and Mr. CHAFEE):

S. 1278. A bill to authorize appropriations for the Office of Environmental Quality for fiscal years 1992, 1993, and 1994, and for other purposes; to the Committee on Environment and Public Works.

NATIONAL ENVIRONMENTAL POLICY ACT

• Mr. LAUTENBERG. Mr. President, today I am introducing legislation which would amend and reauthorize the National Environmental Policy Act [NEPA]. It is very similar to S. 1089, which passed the Senate Environment Committee last year. I am pleased that Senators DURENBERGER, BURDICK, and CHAFEE have joined me in introducing this bill.

IMPLEMENTATION OF NEPA

Mr. President, the signing of NEPA into law on January 1, 1970 ushered us into the environmental era. NEPA requires Federal agencies to consider to the fullest extent possible the environmental impacts of their proposed activities in their decisionmaking process. Federal agencies are authorized to modify their activities to mitigate environmental impacts and avoid the impacts altogether by not proceeding with the activity. To achieve this substantive goal, NEPA requires the preparation of environmental impact statements for major Federal actions significantly affecting the quality of the human environment. This ensures that agency officials and the public are made aware of the environmental impacts and that the public has an opportunity to comment on and become involved in the decision making process.

The success of NEPA is indisputable. According to EPA testimony at the Superfund Subcommittee's hearing on S. 1089 in 1989:

> [I]n the nearly 20 years since Congress passed NEPA, this law has, on the whole, been an outstanding success in getting Federal decision-makers to consider and document environmental issues early in the planning stages for Federal projects.

Scores of activities have been modified because of NEPA. The environmental impact assessment process required by NEPA is being used by many foreign nations and more than 15 States have adopted similar assessment and review processes.

AMENDMENTS TO NEPA

The bill I am introducing today amends NEPA to strengthen its requirements to address problems which have arisen since the law was last amended.

REINVIGORATION OF THE COUNCIL ON ENVIRONMENTAL QUALITY

First, the time has come to reinvigorate the Council on Environmental Quality to implement its responsibilities under NEPA. The Council serves a critical role in coordinating Federal agency environmental programs and policies and advising the President on the vast range of environmental issues. No agency or department head can perform these functions on his or her own. It is imperative that the President has an effective staff in the Executive Office which can do the job.

Under President Reagan, the Council budget and staff were reduced significantly and the President failed to use the Council in a meaningful way to coordinate his environmental policy. A number of ideas to accomplish this goal were suggested in Blueprint for the Environment, a report prepared by the environmental community for President Bush.

One idea was to eliminate two of the three members of the Council and have all of the Council's authority vested in the Chairman. The bill adopts this approach.

The bill also adopts the Blueprint recommendation that the President annually transmit to Congress a report in which the President proposes his environmental policies for congressional consideration. The bill also extends and increases authorizations for CEQ through fiscal year 1994.

Finally, the bill will strengthen the authority of the Council in dealing with independent regulatory agencies such as the Federal Energy Regulatory Commission and the Interstate Commerce Commission. The bill makes clear that independent regulatory commissions must comply with the regulations implementing NEPA published by the Council on Environmental Quality.

ALTERNATIVES AND MITIGATION

The bill addresses the consideration of mitigation measures and alternatives in environmental impact statements. It reemphasizes the importance of considering a broad range of alternatives in the environmental impact statement. The bill also requires CEQ to issue guidelines to require Federal agencies to review a sample of their EIS's to determine the effectiveness of mitigation measures.

Finally, the bill requires Federal agencies in the EIS to identify the mitigation measures they propose to adopt. This requirement would reverse a Supreme Court decision in Robertson versus Methow Valley Citizens Council. The failure to include such mitigation

measures in an EIS defeats both the procedural requirements of NEPA to have the public made aware of mitigation measures the Federal agency will adopt and the substantive requirements of NEPA to take actions to eliminate or reduce the environmental impact. This is hardly an onerous requirement. Under CEQ's existing guidelines, agencies already must prepare a record of decision which includes any mitigation measures the agency will implement.

EXTRATERRITORIAL ACTIONS

The bill clarifies that NEPA applies to all Federal actions, not just those in the United States.

In 1979, President Carter issued Executive Order 12114 to require Federal agencies to take certain international environmental considerations into effect. But the Executive order was not issued under the authority of NEPA so the failure of Federal agencies to comply cannot be challenged in Court, and the other requirements of NEPA, particularly the public participation provisions, are not required for these actions. The Executive order also includes numerous exemptions.

As a result, the environmental impact statement process has rarely been used for Federal actions with extraterritorial impacts. According to a CEQ survey, the total number of actions falling within the Executive order between 1985 and late 1987 was 45 or only 15 per year. This practice is inconsistent with the goals and policies of NEPA.

This is clearly unacceptable. Just 18 months ago, the Congress passed and the President signed into law H.R. 2494. Section 521 of that bill requires the preparation and, with certain exceptions, the public disclosure of environmental assessments on proposed multilateral bank projects before the U.S. could vote in favor of the project.

How can we insist that multilateral banks prepare impact assessments on foreign projects when we fail to require our own Federal agencies to prepare environmental impact statements before taking actions outside the U.S. which may have significant environmental impacts? How can we say that the EIS process has been a major success but then fail to apply that process to extraterritorial actions?

So the bill clarifies that NEPA applies to extraterritorial actions.

Last year, the Justice Department sent a letter saying that this provision was unconstitutional because it infringed on the President's authority to conduct foreign policy.

Mr. President, this argument is without merit. First, the President does not have exclusive authority in the area of foreign affairs. Second, Section 101(b) of NEPA specifically provides that Federal agencies are to apply NEPA, "* * * consistent with other essential consideration of national policy * * *". So NEPA itself is sensitive to foreign policy concerns. And the CEQ NEPA regulations provide that compliance with NEPA is not required where it would be inconsistent with other agency statutory authority.

The bill does not modify these existing provisions. And to supplement these provisions, the bill includes six specific exemptions from the EIS requirement for actions taken to protect the national security, actions taken in the course of an armed conflict, strategic intelligence actions, armament transfers, judicial or administrative civil or criminal enforcement action and votes in international conferences and organizations.

This year, I've added another provision to address this foreign policy concern. The bill gives the President authority to make a finding on a case-by-case basis that it is in the paramount interest of the U.S. to exempt extraterritorial major Federal action from the requirement to prepare an environmental impact statement. When the President makes such a determination, the President must notify the Congress within 30 days of making such a finding and include a summary of the findings in the annual report prepared by the Council.

Mr. President, NEPA itself, as well as the amendments I am proposing today, clearly address any concern about the effect this provision could have on our nation's foreign policy.

GLOBAL ENVIRONMENTAL CONCERNS

The bill clarifies that impact statements must address the cumulative impacts of proposed Federal actions on global climate change, depletion of the ozone layer and transboundary pollution.

The EIS process is rarely used with respect to ozone depletion and global warming. In 1988, CEQ prepared a document that would have required Federal agencies to study the impact of their actions on global climate change. Unfortunately, the Reagan administration, in one of its last acts, decided against issuing this guidance. And more than two years into the Bush Administration, this guidance still has not been issued. According to CEQ Chairman Mike Deland in response to a question I asked him at a Veterans Affairs Appropriations Subcommittee hearing, the Council had no plans to finalize this guidance.

How can the Administration claim to be moving to address global warming and other global environmental issues when we fail to require the most basic requirement to consider these issues in environmental impacts statements?

Mr. President, Federal agencies must address these and other global issues in their environmental impact statements. To fail to do so would be to undercut the whole thrust of NEPA. So the bill requires CEQ to issue regulations to ensure that EISs address global environmental issues.

Mr. President, the U.S. must be a leader in addressing international environmental issues. President Bush and EPA Administrator Reilly both have called for the U.S. to be at the forefront of international environmental challenges. We can hardly be in the forefront with our existing positions on the applicability of NEPA to extraterritorial actions and the failure to consider global environmental concerns in environmental impact statements.

JUDICIAL REVIEW

In the Justice Department letter on NEPA, the Department raised the specter of a floodgate of lawsuits being brought by foreigners to stop U.S. actions. The Justice Department proposed that lawsuits be limited to U.S. residents.

During our hearings on NEPA, we will explore this issue and determine whether any limits on judicial review for extraterritorial actions are appropriated.

CONCLUSION

Mr. President, NEPA is a good and necessary law. The bill I am introducing today will strengthen the NEPA process and the Council on Environmental Quality. I urge my colleagues to join in cosponsoring this legislation. And I ask unanimous consent that a copy of the bill be inserted into the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1278

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF NATIONAL ENVIRONMENTAL POLICY.

(a) STATEMENT OF GENERAL ENVIRONMENTAL POLICY.—Section 101(b) of the National Environmental Policy Act (42 U.S.C. 4331(b)) is amended—

(1) in paragraph (5) by striking "and" following the semicolon:

(2) in paragraph (6) by striking the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(7) provide world leadershp in ensuring a healthy and stable global environment.".

(b) ENVIRONMENTAL IMPACT STATEMENTS.—Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) is amended—

(1) by inserting after "major Federal actions" the following: ", including extraterritorial actions (other than those taken to protect the national security of the United States, votes in international conferences and organizations, actions taken in the course of an armed conflict, strategic intelligence actions, armament transfers, or judicial or administrative civil or criminal enforcement actions),";

(2) by striking clause (iii) and inserting in lieu thereof the following:

"(iii) alternatives to the proposed action that achieve the same or similar public purposes, including alternatives that avoid the

adverse environmental effects described in clause (ii) and alternatives that otherwise mitigate those adverse environmental effects,";

(3) by striking "and" at the end of clause (iv);

(4) by adding the following new clauses:

"(vi) measures that will be taken to mitigate adverse environmental effects if the proposed action is implemented, including the reasons for selecting such measures, and

"(vii) a description of how the proposed action or chosen alternative and selected mitigation measures conform to the policies of this Act.";

(5) by inserting "and the public" immediately before the second period; and

(6) by replacing the semicolon at the end with a period and inserting the following: "The President may find, on a case-by-case basis, that it is in the paramount interest of the United States to exempt a major Federal extraterritorial action of a department, agency, Federal independent regulatory commission, or instrumentality in the executive branch from the requirements of this subparagraph. No such exemption shall be granted due to lack of appropriation. The President shall notify the appropriate committees of Congress within 30 days of making a finding to exempt a major Federal extraterritorial action from the requirements of this subparagraph;".

(c) FEDERAL AGENCY ACTION REGARDING GLOBAL ENVIRONMENT.—Section 102(2)(F) of the National Environmental Policy Act (42 U.S.C. 4332(2)(F)) is amended to read as follows:

"(F) recognize the global and long-range character of environmental problems and work vigorously to develop and implement policies, plans, and actions designed to support national and international efforts to enhance the quality of the global environment;".

SEC. 2. REPORTS TO CONGRESS AND PRESIDENT'S STRATEGY FOR ENVIRONMENTAL PROGRESS.

Section 201 of the National Environmental Policy Act (42 U.S.C. 4341) is amended by inserting "(a)" immediately before "The President shall" and by adding the following new subsection:

"(b) Not later than January 31 of each year, the President shall transmit to the Congress a report which—

"(1) describes the President's strategy for implementing the policy and objectives set forth in section 101 during that year;

"(2) describes areas of new or heightened environmental concern;

"(3) describes initiatives to strengthen and improve Federal environmental programs;

"(4) recommends priorities for national and international actions to protect the environment;

"(5) analyzes problems associated with the implementation of this act and the effectiveness of measures specified in detailed statements of Federal agencies under section 102(2)(C) to mitigate the adverse environmental impacts of Federal actions; and

"(6) summarizes implementation of section 102(2)(C) during the previous year, including a summary of Presidential findings for the exemption of any extraterritorial actions from such requirements.".

SEC. 3. ELIMINATION OF COUNCIL MEMBER POSITIONS.

(a) CHAIRMAN OF THE COUNCIL.—Section 202 of the National Environmental Policy Act (42 U.S.C. 4342) is amended—

(1) by striking the second and third sentences and the words "Each Member" in the fourth sentence and inserting in lieu thereof the following: "The Chairman of the Council shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The Chairman"; and

(2) by inserting at the end thereof the following: "All authority for exercising the powers, functions, and duties of the Council under this Act shall be vested in the Chairman.".

(b) COMPENSATION.—Section 206 of the National Environmental Policy Act (42 U.S.C. 4346) is amended to read as follows: "The Chairman of the Council shall serve full time and shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313).".

SEC. 4. REGULATORY AUTHORITY AND APPLICABILITY.

Section 204 of the National Environmental Policy Act (42 U.S.C. 4344) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(9) to promulgate regulations concerning implementation of the National Environmental Policy Act by all Federal agencies (including Federal independent regulatory commissions). Such regulations shall assure compliance with the statutory requirements of this Act, including the requirement for full consideration of the cumulative environmental impacts of proposed major Federal actions on global climate change, depletion of the ozone layer, transboundary pollution, loss of biological diversity, and other international environmental impacts.".

SEC. 5. REVIEW FUNCTIONS OF THE COUNCIL.

(a) ISSUANCE OF GUIDELINES FOR AGENCY REVIEW OF CERTAIN ENVIRONMENTAL IMPACT STATEMENTS.—Not later than 6 months after the date of the enactment of this Act, the Council on Environmental Quality (hereinafter in this Act referred to as the "Council") shall issue guidelines under which each Federal agency shall review a statistically significant sample of detailed statements prepared by the agency under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) in which measures were specified to mitigate adverse environmental effects.

(b) CONTENT OF GUIDELINES.—Guidelines issued by the Council under subsection (a)—

(1) shall establish the timing and frequency of reviews to be conducted by agencies under the guidelines; and

(2) shall require that Federal agencies examine—

(A) the accuracy of predictions of adverse environmental effects which were included in such statements, including predictions of impacts on fish and wildlife populations and habitats;

(B) the extent to which measures specified in statements under section 102(2)(C) of the National Environmental Policy Act to mitigate adverse environmental effects were implemented; and

(C) the effectiveness of those implemented mitigation measures.

(c) AGENCY REVIEWS.—Each Federal agency shall carry out reviews in accordance with guidelines issued by the Council under this section, and shall promptly submit to the Council the results of those reviews.

(d) SUMMARY OF RESULTS IN ANNUAL COUNCIL REPORT.—The Council shall include a summary of the results of the reviews carried out by Federal agencies under this section in the annual report of the Council transmitted to the Congress under section 201 of the National Environmental Policy Act (42 U.S.C. 4341).

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

Section 205 of the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4374) is amended by adding at the end thereof the following:

"(e) $3,000,000 for fiscal year 1992, and $3,500,000 for each of the fiscal years 1993 and 1994."•

• Mr. BURDICK. Mr. President, I am pleased to be an original cosponsor of legislation to reauthorize funding for the Council on Environmental Quality and to clarify the very important authorities of the National Environmental Policy Act [NEPA]. I commend Senator LAUTENBERG who chairs the Subcommittee on Superfund, Ocean and Water Protection, for developing and introducing this legislation and for his commitment to overseeing effective NEPA implementation.

NEPA is notable for its clear and succinct statement of purpose and authorities. At the core of NEPA is the premise that thoughtful planning and wise decisionmaking will result in beneficial use, conservation, and preservation of our natural resources for future generations. The process set forth for the assessment of environmental impacts from major Federal actions, has been widely adopted by the States and countries throughout the world. NEPA also created the Council on Environmental Quality, separate and distinct from any other Federal agency and department, to advise the President on environmental policy and to oversee implementation of the Act.

The legislation we are introducing today largely builds on the experience we've had through 20 years of NEPA implementation and emphasizes the Federal Government's responsibility to take into account the global impacts of its actions. It also restructures CEQ, by eliminating two of the three Council member positions. This will enable the chairman to carry out his responsibilities more efficiently and responds to proposals by the administration and environmental organizations.

This measure is similar to legislation considered and reported by the Environment and Public Works Committee last year. Senator LAUTENBERG has been attentive to concerns that were expressed about that legislation and has incorporated appropriate modifications in the bill that is being introduced today.

Again, I commend my colleague from New Jersey, Senator LAUTENBERG, for his leadership on this issue and look forward to working with him as the Committee on Environment and Public Works considers the legislation.•

By Mr. CRANSTON (by request):

S. 1279. A bill to amend title 38, United States Code, to eliminate duplication and inconsistency in VA programs

for furnishing veterans with medical, therapeutic, rehabilitative, and prosthetic devices, appliances, equipment, and services; to the Committee on Veterans' Affairs.

CLARIFICATION OF ELIGIBILITY OF VETERAN'S BENEFITS

• Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I am today introducing, by request, S. 1279, a bill to amend title 38, United States Code, to eliminate duplication and inconsistency in VA programs for furnishing veterans with certain medical and other benefits and services. The Secretary of Veterans Affairs submitted this legislation by letter dated May 31, 1991, to the President of the Senate.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all administration-proposed draft legislation referred to the Veterans' Affairs Committee. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point, together with the May 31, 1991, transmittal letter and enclosed bill analysis.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1279

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. Section 601(6)(A)(i) is amended by striking "and (except under the conditions described in section 612(f)(1)(A)(i) of this title), wheelchairs, artificial limbs, trusses, and similar appliances, special clothing made necessary by the wearing of prosthetic appliances," and inserting in lieu thereof "medical equipment and prosthetic appliances,".

SEC. 3. Section 614 is amended to read as follows:

§614. Medical equipment and prosthetic appliances; aids for the blind and hearing impaired

(a) The Secretary shall furnish needed fitting and training in the use of any medical equipment or prosthetic appliance (or seeing-eye or guide dog) that the Department furnishes to a veteran. The training (including institutional training) may be furnished in a Departmental facility, or by contract, and may include travel and incidental expenses (under the provisions of section 111 of this title) to and from the veterans home and the medical center or training institution.

(b) The Secretary may furnish any veteran eligible for medical services with special clothing made necessary by the wearing of a prosthetic appliance.

(c) The Secretary may repair or replace any medical equipment or prosthetic appliance (not including dental appliances) reasonably necessary to a veteran and belonging to such veteran which was damaged or destroyed by a fall or other accident caused by a service-connected disability for which such veteran is in receipt of, or but for the receipt of retirement pay would be entitled to, disability compensation.

(d) The Secretary may provide seeing-eye or guide dogs trained for the aid of the blind to any veteran entitled to disability compensation, and may provide such veteran with devices for assisting in overcoming the handicap of blindness.

(e) The Secretary may furnish devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) to any veteran who is profoundly deaf and is entitled to compensation on acount of hearing impairment.

SEC. 4. Section 617 is amended:

(a) by revising the heading to read as follows:

"§617. Home health services"

(b) by striking subsections (b) and (c);

(c) by striking "(1)" after "(a)" in subsection (a);

(d) by redesignating paragraphs (2) and (3) of subsection (a) as subsections (b) and (c); and

(e) in subsection (b) as redesignated, by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2).

SEC. 5. Section 619 is struck.

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, May 31, 1991.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: There is transmitted herewith a draft bill, "To amend title 38, United States Code, to eliminate duplication and inconsistency in VA programs for furnishing veterans with medical, therapeutic, rehabilitation, and prosthetic devices, appliances, equipment and services." We request that it be referred to the appropriate committee for prompt consideration and enactment.

The VA's authority to furnish disabled veterans with medical, therapeutic, rehabilitative, and prosthetic devices, appliances, equipment and services is found in several different provisions in title 38, United States Code. Congress enacted those provisions incrementally over many years without always considering whether the new provisions were consistent with, or duplicative of existing provisions. This draft bill would eliminate inconsistency and overlapping authority in the Code, clarify more precisely which equipment and services veterans may receive for VA, organize related provisons in a more coherent fashion, and simplify the language used in those provisions.

AMENDMENT OF 38 U.S.C. §601(6)

The draft bill would first simplify the definition of the term "medical services" to state simply that it includes "medical equipment and prosthetic appliances." The term medical services is now defined to include "wheelchairs, artificial limbs, trusses, and similar appliances." The words "artificial limbs" and "trusses" in the definition originated in laws dating back at least to 1876, and the word "wheelchairs" appeared in the law at least as early as 1924. Those terms certainly do not encompass all of the different items of medical equipment, and prosthetic devices that VA now furnishes to disabled veterans. VA furnishes equipment and devices on the basis that the items are appliances similar to wheelchairs, artificial limbs, or trusses. To modernize the language of the law, the draft bill would use the more generic words "medical equipment and prosthetic appliances," which would include, but not be limited to wheelchairs, artificial limbs, and invalid lifts.

The draft bill would also delete from 38 U.S.C. §601(6) language which precludes VA from providing veterans with medical equipment and prosthetic devices as part of outpatient care furnished in preparation for, or to obviate the need for hospital care. The limiting language had its origins in a statutory provision enacted in 1962, when the law authorized VA to furnish nonservice-connected veterans with outpatient care only when necessary to prepare the veteran for inpatient care, or as post-hospital care. Congress apparently added the language to prohibit VA from furnishing equipment and devices to veterans receiving outpatient care in preparation for a scheduled inpatient admission, a quite reasonable restriction. However, in 1973 Congress expanded eligibility to permit the Department to furnish nonservice-connected veterans with outpatient care to "obviate" the need for inpatient care, but did not delete the old restriction.

Continuing the restriction prohibits VA from furnishing veterans with relatively inexpensive medical equipment or prosthetic devices which could alleviate the need for expensive hospital care. For example, a paralyzed wheelchair bound veteran prone to decubitus ulcers cannot be provided an appropriate cushion to relieve pressure areas which, if not provided, would likely result in costly hospitalization for treatment of the ulcers. The draft bill would not change existing language in the law which limits VA to providing only necessary care. That language would control any potential misuse of the broadened authority this draft bill would provide. Thus, the bill would not authorize VA to provide many of the commonly requested devices such as hearing aids, eyeglasses, and automobile adaptive equipment, because those items would not be necessary to prepare a veteran for, or obviate the need for hospital care.

Finally, section 601(6) now defines the term "medical services" as including "special clothing made necessary by the wearing of prosthetic applicance." The draft bill would strike that provision from section 601(6), but amend 38 U.S.C. §614 to specifically authorize VA to furnish veterans with such clothing. As discussed below, the draft bill would amend section 614 to consolidate in that one section the various authorities from VA to furnish veterans with certain specialized items. It would be appropriate to directly authorize the provision of special clothing in that section, rather than indirectly authorize it by including the clothing in the definition of "medical services."

AMENDMENT OF 38 U.S.C. §617

The draft bill would make two changes in section 617(b). First, it would strike subsection (b) in its entirety because it is duplicative of authority which exists elsewhere in the law. Section 617(b) authorizes the Secretary to provide "invalid lifts, or any type of therapeutic or rehabilitative device, as well as medical equipment and supplies" to two categories of veterans: very seriously disabled service-connected veterans receiving compensation under 38 U.S.C. §614(l)–(p), and pensioners receiving increased benefits

because they are in need of regular aid and attendance.

Congress enacted the provisions of section 617(b) at a time when the benefits authorized by the subsection were unavailable to the two groups of veterans. Subsequently, Congress liberalized 38 U.S.C. §612 to authorize VA to furnish the two categories of veterans described in section 617(b) with all needed medical services (including invalid lifts, wheelchairs, trusses, and artificial limbs), rendering the latter subsection superfluous. The two groups of veterans are eligible for equipment and therapeutic or rehabilitative devices (including, but not limited to invalid lifts, wheelchairs, and artificial limbs) under both section 617(b) and section 612. The draft bill would simply delete subsection (b).

Section 617(c) authorizes the Secretary to furnish devices to overcome the handicap of deafness to any hearing impaired veteran who is profoundly deaf, and entitled to compensation for the hearing impairment. The draft bill would move the subsection from section 617 to section 614. No substantive change would be made. As was the case with the special clothing benefit discussed above, the proposed amendment would foster consolidation into one provision, all of the various authorities for VA to furnish veterans with specialized types of devices and equipment.

The provisions now in section 617(a) authorize the Secretary to furnish veterans with home health services. Those provisions would remain in section 617 unchanged. Thus, section 617 would address only one subject, home health services.

AMENDMENT OF 38 U.S.C. §619

Section 619 authorizes the Secretary to repair or replace artificial limbs, braces, eyeglasses, and similar appliances which become damaged or destroyed by a fall or other accident caused by a compensable service-connected disability. The draft bill would make section 619 a subsection of section 614. Again, the change would be made as part of the consolidation of various provisions in section 614. No substantive change would be made in the language now included in section 619.

AMENDMENT OF 38 U.S.C. §614

Section 614 now includes two separate provisions. Subsection (a) authorizes the Secretary to furnish veterans with fitting and training in the use of prosthetic appliances. Subsection (b) authorizes the Secretary to furnish service-connected veterans with seeing eye or guide dogs, and other equipment and devices for aiding those veterans in overcoming the handicap of blindness. The draft bill would revise the language of subsection (a) to clarify that training and fitting may be provided for any medical equipment that VA furnishes, not just for prosthetic appliances. The bill would also make minor nonsubstantive wording changes in both subsections to achieve greater clarity.

Finally, as discussed above, the bill would add three new subsections to section 614 to consolidate provisions now in other sections of the Code. A new subsection (b) would authorize the Secretary to furnish special clothing made necessary by the wearing of a prosthetic appliance, a provision now included in section 601(6). A new subsection (c) would authorize the Secretary to repair or replace any medical equipment or prosthetic appliance damaged by a fall or other accident caused by a service-connected disability, a provision now included in section 619. A new subsection (e) would authorize the Secretary to furnish hearing impaired veterans with devices for overcoming the handicap of deafness, a provision now included in section 617(c).

The amendment to 38 U.S.C. §601(6) to eliminate the restriction on furnishing equipment and appliances to nonservice-connected veterans to obviate the need for hospital care would result in an increase in the cost of providing prosthetic services. It would be offset by reduced hospital admissions. Therefore, we estimate that there will be no increase in costs from the proposal. There would be no cost implications associated with other changes made by the bill.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this legislative proposal to the Congress.

Sincerely yours,

EDWARD J. DERWINSKI.

ANALYSIS OF PROPOSED BILL

Section 2. Section 2 would amend 38 U.S.C. §601(6)(A)(i), which defines the term "medical services." The term is now defined as including "wheelchairs, artificial limbs, trusses, and similar appliances." VA provides most of the prosthetic devices and medical equipment that VA furnishes to veterans under the words "similar appliances". Section 2 of the bill would strike that quoted language and substitute the clearer, simpler, and more up-to-date words "medical equipment and prosthetic appliances." Under the new definition, VA would continue to furnish equipment including, but not limited to wheelchairs, artificial limbs, trusses, and invalid lifts.

The definition of "medical services" now also includes "special clothing made necessary by the wearing of prosthetic appliances". The draft bill would move that language from section 601(6) to section 614. Section 2 of the bill would strike the language from section 601(6), and section 3 (discussed below) would add a new subsection to 38 U.S.C. §614 to directly authorize the Secretary to furnish such special clothing.

Finally, section 2 of the bill would delete language in section 601(6) which prohibits VA from furnishing medical equipment and prosthetic appliances to nonservice-connected veterans on an outpatient basis to obviate the need for hospital care. That restriction in the law dates from 1962, when the law authorized VA to provide nonservice-connected veterans with outpatient care only to prepare them for hospital care, or if needed following a period of hospitalization. In 1973, Congress authorized outpatient care for these veterans to obviate the need for hospital care, but neglected to strike the old limiting language from the law. As a result, VA cannot provide veterans with relatively inexpensive medical equipment or prosthetic devices which would avoid the need for much more expensive hospital care. Section 2 of the draft bill would rectify that problem.

Section 3. Section 3 would amend 38 U.S.C. §614, to make it the principal section of the Code concerned with medical equipment and prosthetic appliances. It would consolidate in that section various "special authorities" now included in other sections which are concerned with prosthetic appliances and medical equipment. Section 3 would also update and simplify the existing language of section 614.

Subsection (a) of section 614 now authorizes the Secretary to furnish fitting and training in the use of a prosthetic appliance furnished by VA. Under the rubric of that language, VA furnishes fitting and training in the use of all medical equipment it furnishes to veterans. As amended by section 3 of the draft bill, section 614(a) would expressly require the Secretary to furnish fitting and training in the use of any medical equipment, prosthetic appliance, or seeing-eye or guide dog that the Department furnishes to a veteran. Section 3 of the draft bill would not change the authority now in section 614(a) to furnish the training (including institutional training) either in a VA facility, or a contract facility. It would also continue to authorize VA to pay for the travel expenses associated with such training in accordance with the provisions of 38 U.S.C. §111, the basic authority to pay for "beneficiary travel."

The draft bill would create a new subsection (b) in section 614 to authorize the Secretary to furnish any veteran eligible for medical services with special clothing made necessary by the wearing of a prosthetic appliance. Under existing law, the definition of the term "medical services" in section 601(6) includes such special clothing, and the Secretary furnishes the clothing under the general authority in section 612 to provide veterans with medical services. The bill simply moves the authority to section 614 to consolidate in that section all of the various authorities in the Code that are associated with medical equipment and prosthetic appliances.

The draft bill would also create a new subsection (c) in section 614 to authorize the Secretary to repair or replace any medical equipment or prosthetic appliance belonging to a veteran which is damaged or destroyed by a fall or other accident caused by a service-connected disability for which the veteran is receiving (or but for the receipt of retirement pay, would be receiving) disability compensation. This authority is now in 38 U.S.C. §619. Section 5 of the draft bill (discussed below) strikes section 619. The new section 614(c) differs from existing section 619 only in that the words "medical equipment or prosthetic appliance" are substituted for the words "artificial limb, truss, brace, hearing aid, spectacles, or similar appliance."

The draft bill would create a new subsection (d) in section 614 which is substantively the same as the existing section 614(b). It authorizes the Secretary to furnish service-connected veterans with guide dogs and other aids to assist in overcoming the handicap of blindness. Language in the existing subsection (b), which authorizes the Secretary to pay for travel expenses associated with adjusting to a guide dog, is deleted from the new subsection (d), because that benefit is provided in the new section 614(a).

Finally, section 3 of the draft bill would create a new subsection (e) in section 614 to authorize the Secretary to furnish a hearing impaired veteran with devices for assisting in overcoming the handicap of deafness, provided the veteran is profoundly deaf and entitled to compensation on account of hearing impairment. This authority is now in 38 U.S.C. §617(c). Section 4 of the draft bill (discussed below) strikes section 617(c). The bill simply moves the authority to section 614 to consolidate in that section all of the various authorities in the Code that are associated with medical equipment and prosthetic appliances.

Section 4. Section 4 would amend 38 U.S.C. §617 to delete both subsection (b) and subsection (c) of that section. Section 617(b) authorizes the Secretary to provide invalid lifts, and various other types of medical equipment and supplies to two categories of veterans, services-connected veterans receiv-

ing compensation under 38 U.S.C. §614(1)-(p), and pensioners receiving increased benefits because they are in need of regular aid and attendance. Congress enacted section 617(b) at a time when the benefits authorized by the subsection were unavailable to the two groups of veterans. Subsequently, Congress amended 38 U.S.C. §612 to authorize VA to furnish all needed medical services to the two categories of veterans described in section 617(b). Thus, the authority in subsection (b) duplicates authority in section 612 to provide medical services as defined in section 601(6). The two groups of veterans are eligible for equipment and therapeutic or rehabilitative devices (including, but not limited to invalid lifts, wheelchairs, and artificial limbs) under both section 617(b) and section 612. The draft bill would delete the duplicative authority.

Section 4 of the draft bill would also strike subsection (c) of section 617, which authorizes the Secretary to furnish hearing impaired veterans with devices to assist in overcoming the handicap of deafness. The subsection is not needed because the authority would be consolidated in 38 U.S.C. §614. Section 3 of the draft bill (discussed above) adds a new subsection (e) to section 614 to authorize precisely the same benefit as is now authorized in section 617(c).

Section 5. Section 5 would strike section 619 from the Code. Section 619 authorizes the Secretary to repair or replace artifical limbs, braces, eyeglasses, and similar appliances which become damaged or destroyed by a fall or other accident caused by a compensable service/connected disability. The section is not needed because the authority for the benefit would be consolidated in 38 U.S.C. §614. Section 3 of the draft bill (discussed above) adds a new subsection (c) to section 614 to authorize the same benefit as is now authorized in section 619.•

By Mr. CRANSTON (by request):

S. 1280. A bill to amend title 38, United States Code, to improve the management of the Veterans Canteen Service; to the Committee on Veterans' Affairs.

VETERANS' AFFAIRS CANTEEN IMPROVEMENT ACT

• Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I am today introducing, by request, S. 1280, a bill to amend title 38, United States Code, to improve the management of the Veterans Canteen Service. The Secretary of Veterans Affairs submitted this legislation by letter dated May 31, 1991, to the President of the Senate.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all Administration-proposed draft legislation referred to the Veterans' Affairs Committee. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point, together with the May 31, 1991, transmittal letter and bill analysis.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1280

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That section 4205 of title 38, United States Code, is amended by adding the following sentence at the end thereof; "As determined by the Secretary, monies in the revolving fund which are not required for current operations, may be invested and reinvested by the Secretary of the Treasury in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States."

ANALYSIS OF DRAFT BILL

The draft bill would amend section 4205 of title 38, United States Code, to authorize the VA to designate monies in the Veterans Canteen Service Revolving Fund which are not required for current operations and authorize the Secretary of the Treasury to invest and reinvest such monies in United States Securities or in any obligations guaranteed as to both principal and interest by the United States. The amendment is necessary to allow the Canteen Service to participate in programs run by the Treasury to allow Federal agencies with funds available for investment to maximize their earnings from United States securities. The law would clarify previous investment authority provided the VA under Public Law 100-322 and continue reforms of the Service's operations to make it more efficient.

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, May 31, 1991.

Hon. DAN QUAYLE,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: We are transmitting herewith a draft bill "To amend title 38, United States Code, to improve the management of the Veterans Canteen Service." We request that the bill be referred to the appropriate committee for prompt consideration.

In 1946, Congress established the Veterans Canteen Service (the Service) in the VA for the primary purpose of providing veterans in VA medical facilities, "at reasonable prices, articles of merchandise and services essential to their comfort and well-being." Congress then made initial appropriations which, with the Service's revenues, were deposited into a Revolving Fund in the United States Treasury to support its activities. The proposed bill would significantly improve the management of the Service by authorizing the Secretary to invest and reinvest monies in the Revolving Fund which are not necessary for current operations in United States securities.

In this regard, the draft bill would continue reforms begun in 1988 when Congress enacted Public Law 100-322, to allow the Service to place Revolving Fund monies in "interest bearing accounts." That law contained several other major reforms of the Service's operating authority, designed to improve its management and encourage it to operate in a more business-like manner. With the consent of the Secretary of the Treasury, the Service has used that authority to place funds in accounts in the Treasury which hold United States securities. The interest earned on these securities is used to support the Service's operations.

However, absent explicit statutory investment authority, the Secretary of the Treasury has declined to allow the Service to participate in the "Federal Investment Counseling Program," under which Treasury officials provide a full-range of advisory services designed to assure the greatest possible return on funds invested by a participating agency in Federal securities. We believe the Service's participation in the Treasury's program will significantly increase the revenues which its funds earn. The proposed legislation will provide the explicit statutory investment authority necessary to participate in the Treasury program as, we believe, was intended by Public Law 100-322.

Funds earned from investments in United States securities would contribute to the Service's Revolving Fund and not require any additional expenditures by the Government.

The Omnibus Budget Reconciliation Act (OBRA) requires that all revenue and direct spending legislation meet a pay-as-you-go (PAYGO) requirement. That is, no such bill should result in an increase in the deficit; and if it does, it must trigger a sequester if it is not fully offset. Offsetting receipts in this bill would equal the increase in direct spending, resulting in a net zero PAYGO effect. Thus, considered alone, this bill meets the PAYGO requirement of OBRA.

We are advised by the Office of Management and Budget that there is no objection to the submission of this draft bill to Congress from the standpoint of the Administration's program.

Sincerely yours,

EDWARD J. DERWINSKI.•

By Mr. RIEGLE:

S. 1281. A bill to provide for immediate delivery of United States Savings Bonds available to the public at the point of purchase; to the Committee on Finance.

UNITED STATES SAVINGS BOND AVAILABILITY ACT

• Mr. RIEGLE. Mr. President, it is no secret that our savings rate in America is low. It is much lower than the rate in many of the countries we compete against in the world economy. If we don't raise our savings rate, many predict that we will not have the investment dollars needed to improve productivity and efficiency. We need to make every effort to raise our savings rate. That is why a recent decision by the Department of the Treasury is so bewildering.

In the name of efficiency, Americans can no longer walk into a financial institution or post office and purchase a U.S. savings bond on the spot. Under a program called the Regional Delivery System, now being implemented by the Treasury Department, a buyer of a savings bond must fill out a request application and wait 3 weeks for the savings bond to arrive. If it is for a gift, the bank can issue a certificate—not the savings bond—that can be placed in an envelope. If the purchaser is "lucky" enough to be located in a Federal Reserve center city or near one of the 25 branches nationwide, then that person can run down to the center or branch and purchase a U.S. savings bond over the counter. To sweeten the deal, the interest begins accruing on the eventu-

ally delivered bond as of the first of the month.

There is just one thing wrong with this supposedly well-intentioned program—many people will no longer endure the hassle now being imposed by the Treasury. People will stop purchasing savings bonds! We will have destroyed a basic key to our savings system in America.

When you are very young, you begin to save by putting into a piggy bank. One of the gifts that is most often given to a new baby or at the first birthday is a piggy bank. Children are then taught the benefits of saving. Parents, grandparents, and relatives often give a child a coin to put into their piggy bank. It may sound a little hokey here on the floor of the Senate, but a piggy bank represents the beginning of a lifetime of saving for the future. And U.S. savings bonds have been a vital step in the saving process.

At first, a child might receive a U.S. savings bond as a gift. It is a unique gift to a child. It represents something important and it cannot be instantly used. When it is eventually cashed in, it has increased in value because of something called "interest." A child now has learned the value of deferring immediate gratification and has also learned the value of interest.

When that child begins to earn money by mowing lawns, delivering newspapers, babysitting, or some other chore, the child is taught that part of the money earned should be set aside for a "rainy day," a new bicycle, holiday gifts, or college. And where do most of these kids turn to? They turn to U.S. savings bonds. What a great idea! Our kids now learn not only the value of savings and interest, they also put their money into the future of America.

So why throw a roadblock in such a wonderful way of teaching the savings process to the youth of America? We want our kids to save and buy U.S. savings bonds. We need to keep the system of purchase as easy as possible. We need to keep the amount of the bonds small so that kids can buy them and we must make sure that you can walk into a bank in any town—whether New York City; Saginaw, MI, or Whitefish, MT—and buy a U.S. savings bond on the spot and walk out with the bond in hand.

We need to bring Americans closer to their Government rather than driving a further wedge into the gap that exists. The legislation I am introducing today keeps this on the purchase of U.S. savings bonds a part of our savings system in America.

Who doesn't remember the fable of "The Ant and the Grasshopper"? The ant worked hard to store food for the winter while the grasshopper played. When the fall came and the grasshopper was hungry, the ant inquires, "and what were you doing all summer?" The grasshopper answers, "I had a right jolly time playing my fiddle in the sun." The ant retorts back, "Ho, ho, you did. Well, those that play all summer and don't work deserve to starve in winter. Be gone."

This fable and many other stories are used at home and in school to stress on our children the importance of work and saving. These stories portray why we need to maintain on the spot purchase of U.S. savings bonds.

Mr. President, I ask unanimous consent that the text of my bill appear in the RECORD immediately following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Savings Bond Availability Act of 1991".

SEC. 2. PURPOSE.

The purpose of this Act is to ensure that United States Treasury bonds remain readily available for purchase by the Public.

SEC. 3. UNITED STATES SAVINGS BOND AVAILABILITY.

The Secretary of the Treasury shall make an adequate supply of United States Savings Bonds available to an issuing agent, qualified under regulations established by the Secretary of the Treasury to issue United States Savings Bonds, for immediate, over-the-counter delivery to the public upon demand at the point of purchase.•

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 1282. A bill to improve the supervision and regulation with respect to financial safety and soundness of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; to enhance the safety and soundness of the Farm Credit System; and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

GOVERNMENT-SPONSORED ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT

• Mr. RIEGLE. Mr. President, last fall's Omnibus Budget Reconciliation Act [OBRA] required the Treasury Department to recommend legislation to ensure the safety and soundness of Government sponsored enterprises [GSE's]. Senator GARN and I are introducing that legislation today by request.

Government sponsored enterprises include the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, the Student Loan Marketing Association, and the Federal Farm Credit System. They were created by Congress to facilitate access to credit by homebuyers, students, and farmers. And they have done an excellent job, aiding millions of families. But, though none are in any imminent danger, they potentially pose substantial risks to taxpayers, over which the Government has little control.

While GSE's are privately owned, and their liabilities are not explicitly guaranteed by the Government, few doubt that we would not back them up if they were in danger of failing. Their congressional charters, exemptions from securities laws, lines of credit with the Treasury, tax exemptions, and their immense importance to the critical markets they serve leave little question about the implicit Government guarantee which the financial markets assume stands behind them. Actions to support the Farm Credit System in 1987 and the deposit insurance funds have reinforced that assumption.

These agencies currently have over a trillion dollars in debt outstanding for which we are potentially liable. But, as documented in studies by the Treasury, the GAO, the CBO, and the Administrative Conference, we have little control over the safety with which they conduct their operations. All of these studies have recommended substantial changes in Federal supervision and capital standards for GSE's.

The Senate recognized the importance of this issue last October by including in OBRA the sense of the Senate that legislation should be reported to the floor by September 15, this year. That will be a tough deadline to meet. Our committee's first priorities this year must be banking reform and RTC funding, and the Treasury delayed our start on this legislation by sending up their proposal a month later than OBRA required. But it is my intention—notwithstanding the committee's hearing agenda, the lateness of the administration's proposal and its complexity—to attempt to meet our deadline if at all possible.

The Banking Committee has been studying this problem for 2 years. We placed requirements for the first studies by Treasury and GAO in the FIRREA thrift legislation and have since held 5 hearings on GSE's. Our interest stems not only from the fact that three of the five GSE's dealt with in this legislation are housing agencies, but also from the roles of each of them as financial institutions and issuers of Federal debt. Other committees have important interests as well, and likely will be working on legislation of their own. We hope to work closely with them, so that the final result shows some consistency in the treatment of GSE's, at a minimum, or as the GAO proposes, puts all GSE's under a single regulator.

Some may ask why we need to do this now, if GSE's pose little immediate risk. But I think Congress was wise to encourage legislation this year, when there is no crisis at hand. If we've learned anything from the series of

thrift and bank failures we have had, we've learned that the cost of acting after a problem develops is great. If we act now, while there is no crisis—but when all of these studies tell us we are unnecessarily risking one in the future—we may avoid a large cost later on.

Mr. President, I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1282

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Government-Sponsored Enterprises Financial Safety and Soundness Act of 1991".

(b) TABLE OF CONTENTS.—

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

TITLE I—IMPROVEMENT OF SUPERVISION AND REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE ASSOCIATION

Sec. 101. Findings.
Sec. 102. Definitions.

Subtitle A—Establishment of Financial Safety and Soundness Regulator

Sec. 111. Establishment of the Office of Government-Sponsored Enterprise Financial Oversight.
Sec. 112. Director of the Office of Government-Sponsored Enterprise Financial Oversight.
Sec. 113. Amendment to section 5314 of title 5, United States Code.
Sec. 114. Authority of the Director.
Sec. 115. Personnel.
Sec. 116. Regulations and orders.
Sec. 117. Amendments to Federal National Mortgage Association Charter Act.
Sec. 118. Amendments to Federal Home Loan Mortgage Corporation Act.
Sec. 119. Final reports.
Sec. 120. Funding.

Subtitle B—Capital Levels and Special Enforcement Powers

Sec. 131. Capital adequacy and prompt corrective action.
Sec. 132. Safe harbor.
Sec. 133. Reports to Director.
Sec. 134. Examinations.

Subtitle C—General Enforcement Powers

Sec. 141. Cease-and-desist proceedings.
Sec. 142. Temporary cease-and-desist orders.
Sec. 143. Removal and prohibition authority.
Sec. 144. Suspension or removal of director or executive officer charged with felony.
Sec. 145. Hearings and judicial review.
Sec. 146. Jurisdiction and enforcement.
Sec. 147. Civil money penalty.
Sec. 148. Notice under this subtitle after separation from service.
Sec. 149. Notice of service.
Sec. 150. Subpoena power, etc.
Sec. 151. Public disclosure of final orders and agreements.

Subtitle D—Conservatorship

Sec. 161. Appointment of conservator.
Sec. 162. Examinations.
Sec. 163. Termination of conservatorship.
Sec. 164. Conservator; powers and duties.
Sec. 165. Liability protection.
Sec. 166. Powers of officers not affected.
Sec. 167. Rules and regulations.

TITLE II—PRIMACY OF FINANCIAL SAFETY AND SOUNDNESS FOR THE FEDERAL HOUSING FINANCE BOARD

Sec. 201. Amendment to the Federal Home Loan Bank Act.

TITLE III—IMPROVEMENT OF SUPERVISION AND REGULATION OF THE STUDENT LOAN MARKETING ASSOCIATION

Sec. 301. Findings.
Sec. 302. Definitions.

Subtitle A—Establishment of Financial Safety and Soundness Regulator

Sec. 311. Annual Reports.
Sec. 312. Funding.
Sec. 313. Amendments to the Higher Education Act of 1965.

Subtitle B—Capital Levels and Special Enforcement Powers

Sec. 321. Capital Adequacy and Prompt Corrective Action.
Sec. 322. Reports To Secretary.
Sec. 323. Examinations.
Sec. 324. Safe Harbor.

Subtitle C—General Enforcement Powers

Sec. 331. Cease-and-Desist Proceedings.
Sec. 332. Temporary Cease-and-Desist Proceedings.
Sec. 333. Removal and Prohibition Authority.
Sec. 334. Suspension or Removal of Director or Executive Officer Charged with Felony.
Sec. 335. Hearings and Judicial Review.
Sec. 336. Jurisdiction and Enforcement.
Sec. 337. Civil Money Penalty.
Sec. 338. Notice under this Section after Separation from Service.
Sec. 339. Notice of Service.
Sec. 340. Subpoena Power, Etc.
Sec. 341. Public Disclosure of Final Orders and Agreements.

Subtitle D—Conservatorship

Sec. 351. Appointment of Conservator.
Sec. 352. Examinations.
Sec. 353. Termination of Conservatorship.
Sec. 354. Conservator; Powers and Duties.
Sec. 355. Liability Protection.
Sec. 356. Powers of Officers not Affected.
Sec. 357. Rules and Regulations.

TITLE IV—JURISDICTION OF COURTS IN PROMPT CORRECTIVE ACTION

Sec. 401. Jurisdiction.

TITLE V—FARM CREDIT SYSTEM

Subtitle A—Improvements to Farm Credit System Safety and Soundness

Sec. 501. Clarification of Funding Corporation Authority.
Sec. 502. Access to Association Capital.
Sec. 503. Enhanced Supervision Over Federal Agricultural Mortgage Corporation.

Subtitle B—Farm Credit System Insurance Corporation

Sec. 511. Board of Directors.
Sec. 512. Risk-Based Insurance Premiums.
Sec. 513. Statutory Successor to Assistance Board Agreements.

Subtitle C—Farm Credit System Consolidation

Sec. 521. Consolidation of District Banks.
Sec. 522. Terms of Consolidation.

Subtitle D—Repayment of FAC Debt Obligation

Sec. 531. Repayment of Treasury Interest Payments.
Sec. 532. Capital Preservation Assistance.

Subtitle E—Farm Credit System Bank and Institution Management

Sec. 541. Boards of Directors.

TITLE I—IMPROVEMENT OF SUPERVISION AND REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE ASSOCIATION

SEC. 101. FINDINGS.

The Congress finds that—

(a) The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have important public missions, as reflected in their Federal charters;

(b) Because the continued ability of these enterprises to accomplish their public missions is important to the health of the United States economy, more effective Government regulation is needed to provide sustained outside discipline and thereby to reduce the risk of failure;

(c) The regulatory framework of these enterprises should embody the following principles—

(1) financial safety and soundness should be given primacy over other public policy considerations in the regulation of these enterprises;

(2) the regulator should have sufficient stature to maintain independence from the enterprises and special interest groups;

(3) private market risk assessment mechanisms can help the regulator assess the financial safety and soundness of the enterprises; and

(4) the basic statutory authorities for financial safety and soundness regulation should be consistent across all Government-sponsored enterprises; therefore, the regulator should have the authority, among others, to establish capital standards; require financial disclosure; if necessary, prescribe adequate standards for books and records and other internal controls; conduct examinations; and enforce compliance with the standards and rules that it establishes; and

(d) While the Federal Housing Finance Board has the regulatory authorities necessary to regulate effectively the financial safety and soundness of the Federal Home Loan Banks' operations, its statute should be amended to clarify that financial safety and soundness is the primary mission of the agency.

SEC. 102. DEFINITIONS.

As used in this title—

(a) CAPITAL.—The term "capital" means, as determined in accordance with generally accepted accounting principles, the sum of—

(1) the par value of outstanding common stock;

(2) the par value of outstanding preferred stock;

(3) paid-in capital; and

(4) retained earnings.

(b) CAPITAL DISTRIBUTION.—The term "capital distribution" means—

(1) a dividend or other distribution in cash or in kind made with respect to any shares or other ownership interest of either enterprise, except a dividend consisting only of shares of the enterprise;

(2) a payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition of such shares; or

(3) a transaction that the Director determines by order or regulation to be in substance the distribution of capital.

(c) COMPENSATION.—The term "compensation" means any payment of money or provi-

sion of any other thing of current or potential value in connection with employment.

(d) DIRECTOR.—The term "Director" means the Director of the Office of Government-Sponsored Enterprise Financial Oversight.

(e) ENTERPRISE.—The term "enterprise" means—

(1) the Federal National Mortgage Association and any affiliate thereof; and

(2) the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(f) EXECUTIVE OFFICER.—The term "executive officer" of an enterprise means—

(1) the chief executive officer;

(2) the chief financial officer; or

(3) any other person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the enterprise whether or not the person—

(A) has an official title;

(B) has a title designating the person an assistant; or

(C) is serving without compensation.

(g) OFFICE.—The term "Office" means the Office of Government-Sponsored Enterprise Financial Oversight.

(h) NEW PROGRAM.—The term "new program" of an enterprise means any purchase, servicing, sale, swap, loan on the security of, or other dealing in mortgages or mortgage-related instruments which differs significantly and materially from existing programs of the enterprise in terms of type of property, term of mortgage, nature of mortgage instrument, type or amount of mortgage insurance, nature of lien, form of securitization, or other significant matter.

(i) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

Subtitle A—Establishment of Financial Safety and Soundness Regulator

SEC. 111. ESTABLISHMENT OF THE OFFICE OF GOVERNMENT-SPONSORED ENTERPRISE FINANCIAL OVERSIGHT.

Effective January 1, 1992, there shall be established in the Department of Housing and Urban Development the Office of Government-Sponsored Enterprise Financial Oversight which shall be a bureau within the Department.

SEC. 112. DIRECTOR OF THE OFFICE OF GOVERNMENT-SPONSORED ENTERPRISE FINANCIAL OVERSIGHT.

(a) IN GENERAL.—The Office shall have a Director who shall be the head of the Office.

(b) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(c) TERM.—The Director shall be appointed for a term of five years and shall serve at the pleasure of the President.

(d) VACANCY.—A vacancy in the position of Director which occurs before expiration of the term for which a Director was appointed shall be filled in the manner established in subsection (b), and the Director appointed to fill such vacancy shall be appointed only for the remainder of said term.

(e) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed.

(f) ACTING DIRECTOR.—

(1) Subject to subsection (d)—

(A) the Director may designate who shall act as Director if the Director dies, resigns, or is sick or absent; and

(B) in the event that the Director is unable to make such a designation because of the Director's death, disability, resignation, or removal, the Secretary shall designate an Acting Director.

(2) An Acting Director designated under paragraph (1) shall possess the power to perform the duties vested in the Director.

SEC. 113. AMENDMENT TO SECTION 5314 OF TITLE 5, UNITED STATES CODE.

Section 5314 of title 5, United States Code, is amended by inserting at the end "Director of the Office of Government-Sponsored Enterprise Financial Oversight.".

SEC. 114. AUTHORITY OF THE DIRECTOR.

(a) EXCLUSIVE AUTHORITY OF THE DIRECTOR.—The Director shall have the exclusive authority to make such determinations and to take such actions as are deemed necessary with respect to a specific enterprise regarding—

(1) the denial for reasons of financial safety and soundness of any request for approval under the applicable law and regulations;

(2) an examination;

(3) a decision to appoint a conservator for an enterprise; and

(4) any enforcement action under subtitle B or C, including the final decision in a contested administrative enforcement proceeding.

Nothing in this subsection shall be construed to prohibit the Director from consulting with the Secretary on any matter.

(b) AUTHORITY OF THE SECRETARY.—All other authority vested in the Director, including the authority to issue rules and regulations, shall be exercised by the Director subject to the review and approval of the Secretary.

(c) DELEGATION OF AUTHORITY.—The Director may delegate to Development"; any employee, representative or agent of the Office any authority of the Director.

SEC. 115. PERSONNEL.

The Director shall fix the number of, appoint, set the compensation of, and direct all employees of the Office.

SEC. 116. REGULATIONS AND ORDERS.

(a) AUTHORITY.—The Director may prescribe such regulations and issue such orders as the Director may determine to be necessary or appropriate for carrying out any law within the Director's jurisdiction.

(b) EXEMPTION FROM PRIOR NOTIFICATION TO THE CONGRESS.—The provisions of section 3535(o), title 42, United States Code, shall not apply with respect to rules and regulations under development or review or to be published by the Director pursuant to this Act.

SEC. 117. AMENDMENTS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT.

(a) Section 303(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718(b)) is amended by striking "Secretary of Housing and Urban Development" and inserting instead "Director of the Office of Government-Sponsored Enterprise Financial Oversight".

(b) Section 304(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(b)) is amended—

(1) in the first sentence, by striking the semicolon and all that follows through "Secretary of Housing and Urban Development";

(2) by striking the second sentence;

(3) in the first sentence, by inserting "and the Director of the Office of Government-Sponsored Enterprises Financial Oversight" after "the Secretary of the Treasury" both times it occurs; and

(4) by inserting after the first sentence the following new sentence: "Any obligation that the corporation has issued or is issuing as of the date of enactment of the Government-Sponsored Enterprises Financial Safety and Soundness Act of 1991, or any obligation of a substantially identical type, shall be deemed to have been approved by the Director of the Office of Government-Sponsored Enterprises Financial Oversight.".

(c) Section 309(h) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(h)) is amended in the first sentence by striking "The" and inserting instead "Except for authority vested in the Director of the Office of Government-Sponsored Enterprises Financial Oversight, the".

(d) Section 311 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723c) is amended by striking "and all issuances of stock, and debt obligations convertible into stock, by the corporation".

(e) EFFECTIVE DATES.—

(1) The provisions of subsections (a), (c), and (d) shall become effective on January 1, 1992.

(2) The provisions of subsection (b) shall become effective three years after the date of enactment of this Act.

(f) TRANSITIONAL PROVISION.—Any rules or regulations issued by the Secretary pursuant to the provisions of the Federal National Mortgage Association Charter Act shall be effective and enforceable by the Secretary to the extent that such rules and regulations are not inconsistent with the authorities and duties of the Director under this title.

SEC. 118. AMENDMENTS TO FEDERAL HOME LOAN MORTGAGE CORPORATION ACT.

(a) Section 303(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)) is amended—

(1) in paragraph (1), by striking "The" the first time it appears and inserting instead "Except for authority vested in the Director of the Office of Government-Sponsored Enterprises Financial Oversight, the"; and

(2) by striking paragraphs (3), (5), and (6) and redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.

(b) Section 306(j) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(j)) is amended—

(1) in paragraph (1), by inserting "and the Director of the Office of Government-Sponsored Enterprises Financial Oversight" and "Secretary of the Treasury" both times it occurs; and

(2) by inserting after paragraph (3) the following new paragraph:

"(4) Any notes, debentures, or other unsecured obligations of the Corporation that the Corporation has issued or is issuing as of the date of enactment of the Government-Sponsored Enterprises Financial Safety and Soundness Act of 1991, or any obligation of a substantially identical type, shall be deemed to have been approved by the Director of the Office of Government-Sponsored Enterprises Financial Oversight.".

(c) EFFECTIVE DATE.—The amendments described in subsection (a)(1), (a)(2) (other than the amendment striking paragraph (5)), and (a)(3) and the provisions of subsection (b) shall become effective on January 1, 1992. The amendment in subsection (a)(2) that strikes paragraph (5) shall become effective three years after the date of enactment of this Act.

(d) TRANSITIONAL PROVISION.—Any rules or regulations issued by the Secretary pursuant to the provisions of the Federal Home Loan Mortgage Corporation Act shall be effective and enforceable by the Secretary to the extent that such rules and regulations are not inconsistent with the authorities and duties of the Director under this title.

SEC. 119. ANNUAL REPORTS.

Not later than April 15 of each year beginning in 1992, the Director shall make a written report to the Congress setting out—

(a) the steps the Director has taken and is taking to implement the provisions of this title;

(b) the financial safety and soundness of each enterprise; and

(c) any recommendations for amendment of this title or any other law affecting the financial safety and soundness of the enterprises.

SEC. 120. FUNDING.

(a) ASSESSMENTS, FEES, AND OTHER CHARGES.—The Secretary is authorized to impose and collect assessments, fees, and other charges on the enterprises as necessary or appropriate to carry out the Director's responsibilities and the Secretary's other regulatory responsibilities for the enterprises. Such assessments, fees, and other charges shall be set to meet the full cost to the Federal Government of the services provided by the Director and the Secretary in carrying out such responsibilities.

(b) TREASURY ACCOUNT.—There is hereby established in the Treasury a separate fund into which the assessments, fees, and other charges collected pursuant to subsection (a) shall be deposited and immediately available to carry out the responsibilities of the Secretary and the Director described in subsection (a) without regard to fiscal year limitation. Such amounts deposited in the fund as the Secretary deems necessary can be used for payments to the Department of Housing and Urban Development "Salaries and Expenses" account to carry out the purposes of this section.

Subtitle B—Capital Levels and Special Enforcement Powers

SEC. 131. CAPITAL ADEQUACY AND PROMPT CORRECTIVE ACTION.

(a) CLASSIFICATION ACCORDING TO CAPITAL SUFFICIENCY.—

(1) ESTABLISHMENT OF RELEVANT CAPITAL MEASURES AND MINIMUM RISK-BASED CAPITAL LEVELS.—

(A) ESTABLISHMENT BY DIRECTOR.—To satisfy the criteria specified in subparagraph (B), the Director shall by regulation establish—

(i) relevant capital measures; and

(ii) minimum risk-based capital levels for each such relevant capital measure.

(B) CRITERIA FOR MINIMUM RISK-BASED CAPITAL LEVEL.—The relevant capital measures and corresponding minimum risk-based capital levels established by the Director shall ensure that the total capital of each enterprise—

(i) exceeds the leverage limit specified in paragraph (2); and

(ii) equals, as determined by the Director, the sum of—

(I) an amount of capital sufficient, when considered in conjunction with guarantee fees paid to the enterprise, to enable the enterprise to maintain positive capital to cover for interest rate risk and credit risk, independently, under stressful economic circumstances determined by the Director;

(II) an amount of capital sufficient to protect against management risk, operations risk, and business risk; and

(III) an amount of capital sufficient to provide capital coverage at the margin for proposed new programs or lines of business whose risk characteristics are uncertain.

(2) LEVERAGE LIMIT.—

(A) STATUTORY FLOOR.—For purposes of this section, the leverage limit shall be a level of capital equal to the sum of—

(i) 2.50 percent of total on-balance sheet assets;

(ii) 0.45 percent of total face value of outstanding mortgage-backed securities issued or guaranteed by the enterprise; and

(iii) such other percentage of other off-balance sheet obligations as the Director may establish by regulation.

(B) DISCRETIONARY UPWARD ADJUSTMENT.—The Director may by regulation establish a leverage limit above the level specified in subparagraph (A).

(3) CRITICAL CAPITAL LEVEL.—For purposes of this section, the critical capital level shall be a level of capital equal to the sum of—

(A) 1.25 percent of total on-balance sheet assets;

(B) 0.25 percent of total face value of outstanding mortgage-backed securities issued or guaranteed by the enterprise; and

(C) such other percentage of other off-balance sheet obligations as the Director may establish by regulation.

(4) USE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—For the purposes of paragraphs (2) and (3), "on-balance sheet assets" and "off-balance sheet obligations" shall be determined according to generally accepted accounting principles.

(5) EFFECTIVE DATES.—

(A) ESTABLISHMENT OF MINIMUM RISK-BASED CAPITAL LEVELS.—The Director shall establish the relevant capital measures and capital levels required under paragraph (1) no later than one year after the date of enactment of this Act.

(B) PHASE-IN FOR LEVELS I AND II.—The provisions of this section that authorize the Director to take action by reason of an enterprise falling within Levels I or II shall become effective three years after the date of enactment of this Act.

(C) PHASE-IN FOR LEVEL III.—The provisions of this section that authorize the Director to take action by reason of an enterprise falling within Level III shall become effective one year after the date of enactment of this Act.

(6) DEFINITION OF CAPITAL LEVELS.—Unless otherwise reclassified pursuant to paragraph (6), for purposes of this section—

(A) LEVEL I.—Level I includes any enterprise that—

(i) maintains capital that is below the minimum risk-based capital level for any relevant capital measure; and

(ii) is not within Levels II, III, and IV;

(B) LEVEL II.—Level II includes any enterprise that—

(i) maintains capital that is significantly below the minimum risk-based capital level for any relevant capital measure but that is at or exceeds the leverage limit; or

(ii) is otherwise classified within Level II under the provisions of this section;

(C) LEVEL III.—Level III includes any enterprise that—

(i) maintains capital that is below the leverage limit but that is at or exceeds the critical capital level; or

(ii) is otherwise classified within Level III under the provisions of this section; and

(D) LEVEL IV.—Level IV includes any enterprise that maintains capital below the critical capital level.

(7) RECLASSIFICATION.—The Director may reclassify any enterprise that is not within Level IV to Level III if the Director determines that that enterprise is in an unsafe and unsound condition or engaging in an unsafe or unsound practice.

(b) REGULATIONS AND OTHER AUTHORITY.—

(1) IN GENERAL.—The Director shall promulgate regulations and take such other actions as are necessary to implement the provisions of this section and is authorized to issue orders and take such other actions as are necessary or appropriate to carry out the purposes of this section.

(2) CAPITAL ZONES.—Consistent with the purposes of this section, the Director shall by regulation specify the applicable capital levels for each relevant capital measure in each capital level established by this section.

(3) APPROVAL OF ACTIVITIES.—An enterprise within Level I, II, III, or IV may undertake any activity subject to the approval of the Secretary pursuant to the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act only with the additional approval of the Director, as provided in this section.

(c) MANDATORY SUPERVISORY ACTIONS APPLICABLE TO ENTERPRISES WITHIN LEVEL I.—

(1) RESTRICTIONS ON EXPANSION.—

(A) EXPANSION RESULTING IN RECLASSIFICATION.—The Director shall not approve or permit—

(i) any new program, any purchase of mortgage loans for portfolio or securitization, or any other investment or activity, subject to approval by the Director that would result in reclassification of an enterprise within Level I to Level II or III, unless the Director finds that the transaction substantially improves the financial condition of an enterprise involved in the transaction or is consistent with a capital restoration plan approved by the Director and meets the other standards required to be reviewed by the Director in considering such proposals under the applicable laws; and

(ii) any new program, any purchase of mortgage loans for portfolio or securitization, or any other investment or activity, subject to approval by the Director that would result in reclassification of the enterprise to Level IV.

(B) UNSAFE AND UNSOUND PRACTICES OR CONDITION.—The Director shall not approve or permit any new program, any purchase of mortgage loans for portfolio or securitization, or any other investment or activity involving an enterprise within Level I if the Director determines that the enterprise involved in the investment or other activity is engaging in an unsafe and unsound practice or is in an unsafe and unsound condition.

(2) CAPITAL DISTRIBUTIONS.—

(A) LIMITATION.—No enterprise within Level I shall make any capital distribution that would cause the enterprise to be reclassified within Levels III or IV. Such enterprise may make a capital distribution that would cause the enterprise to be reclassified to Level II, if the enterprise provides the Director with written notice pursuant to section 133(d) and the Director has issued a notice of approval.

(B) STANDARDS FOR APPROVAL.—The Director shall approve payment of a capital distribution by an enterprise under this paragraph only if the Director determines that the capital distribution will enhance the enterprise's ability to meet the minimum risk-based capital levels for all relevant capital measures or that the distribution is otherwise in the public interest.

(3) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Director may modify, defer, or remove any mandatory supervisory action applicable under this section to an enterprise within Level I if the Director determines in writing that such action is in the public interest.

(d) PROVISIONS APPLICABLE TO ENTERPRISES WITHIN LEVEL II.—

(1) MANDATORY SUPERVISORY ACTIONS.—

(A) CAPITAL RESTORATION PLAN.—Every enterprise within Level II shall, within the time period provided in subsection (h), submit to the Director and, after its acceptance, implement a capital plan that meets the requirements of subsection (h) and will restore the relevant capital measures of the enterprise to at least the levels required for classification within Level I.

(B) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

(i) PRIOR APPROVAL REQUIRED.—No enterprise within Level II shall make any capital distribution that would cause the enterprise to be reclassified within Levels III or IV. No enterprise within Level II shall make any other capital distribution unless the enterprise receives the prior approval of the Director.

(ii) STANDARDS FOR APPROVAL.—The Director may approve payment of a capital distribution by an enterprise within Level II only if the Director determines that the capital distribution will enhance the ability of the enterprise promptly to meet the minimum risk-based capital levels for all relevant capital measures or is otherwise in the public interest.

(C) RESTRICTION ON EXPANSION.—The Director shall not approve or permit any new program, any purchase of mortgage loans for portfolio or securitization, or any other investment or activity, subject to approval by the Director by an enterprise within Level II unless the Director finds that the transaction furthers achievement of the capital restoration plan approved by the Director for the enterprise.

(D) RECLASSIFICATION FROM LEVEL II TO LEVEL III.—An enterprise within Level II shall immediately be reclassified to Level III, and shall be subject to all of the provisions applicable to enterprises within Level III, if—

(i) the enterprise does not submit the capital restoration plan required in subparagraph (A) within the time required by the Director; or

(ii) the Director is not satisfied that the enterprise is making every effort in good faith to fulfill completely the capital plan within the schedule approved by the Director.

(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Director may modify, defer, or remove any mandatory supervisory action applicable under this section to an enterprise within Level II if the Director determines in writing that such action is in the public interest.

(3) DISCRETIONARY SUPERVISORY ACTIONS.—In addition to any other authority of the Director, the Director may, at any time, based upon a finding that the enterprise is within Level II—

(A) LIMIT INCREASE IN LIABILITIES.—Limit any increase in, or order the reduction of, any liabilities of the enterprise, including off-balance sheet liabilities.

(B) RESTRICT GROWTH.—Restrict or eliminate growth of the enterprise's assets, or require contraction of the assets of the enterprise.

(C) RESTRICT DISTRIBUTIONS.—Restrict the enterprise from making any capital distribution.

(D) REQUIRE ISSUANCE OF NEW CAPITAL.—Require the enterprise to issue new capital in any form and in any amount sufficient to restore the enterprise to at least the capital levels required for Level I.

(E) RESTRICT ACTIVITIES.—Require the enterprise to terminate, reduce or alter any activity, if the Director determines that the activity creates excessive risk to the enterprise.

(F) LIMIT EXECUTIVE COMPENSATION.—Require the enterprise to reduce or eliminate any or all of the following for any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the enterprise following enactment of this Act—

(i) any bonus;

(ii) any compensation at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months; and

(iii) any payment that is or would be due under any employment severance contract.

(e) PROVISIONS APPLICABLE TO ENTERPRISES WITHIN LEVEL III.—

(1) MANDATORY SUPERVISORY ACTIONS.—

(A) CAPITAL RESTORATION PLAN.—Unless an enterprise within Level III has submitted a capital restoration plan acceptable to the Director pursuant to subsection (e), it shall, within the time provided under subsection (h), submit to the Director and, after its acceptance, implement a capital plan that meets the requirements of subsection (h) and will restore the relevant capital measures of the institution to at least the levels required for classification within Level I.

(B) PROHIBITION ON CAPITAL DISTRIBUTIONS.—No enterprise within Level III shall make any capital distribution.

(C) PROHIBITION ON EXPANSION.—No enterprise within Level III shall directly or indirectly engage in any new investment or activity.

(D) LIMITATION ON ASSET GROWTH.—

(i) No enterprise within Level III shall increase its total assets, except as permitted under clause (ii).

(ii) Notwithstanding clause (i), the Director may permit a enterprise within Level III to increase its total assets if—

(I) the Director has accepted the enterprise's capital restoration plan;

(II) any increase in assets is accompanied by an increase in capital in an amount not less than the increase in assets multiplied by the respective relevant capital measures for Level I enterprises; and

(III) the enterprise's capital levels increase at a rate sufficient to enable the enterprise to satisfy the enterprise's capital restoration plan within a reasonable time.

(E) LIMITATION ON COMPENSATION.—An enterprise within Level III may not pay to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the enterprise following enactment of this Act—

(i) any bonus;

(ii) any compensation at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months;

(iii) any payment that is or would be due under any employment severance contract.

(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Director may modify, defer, or remove any mandatory supervisory action authorized by this section from an enterprise within Level III if the Director determines in writing that such action is in the public interest.

(3) DISCRETIONARY SUPERVISORY ACTIONS.—In addition to any other authority of the Director, the Director may, at any time, take any of the following actions based upon a finding that the enterprise is within Level III—

(A) DISCRETIONARY SUPERVISORY ACTIONS PERMITTED UNDER LEVEL I OR LEVEL II.—Take any discretionary supervisory action authorized under subsection (e)(3) in connection with an enterprise within Level III.

(B) LIMIT EXECUTIVE COMPENSATION.—Require the enterprise to reduce or eliminate any compensation to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the enterprise following enactment of this Act if the Director determines the compensation to be excessive.

(C) DISMISS DIRECTORS OR EXECUTIVE OFFICERS.—

(i) Require the enterprise to dismiss from office at the enterprise any or all of the following persons if the person accepted employment, accepted a new position, or renewed any contract for employment in the same position at the enterprise following enactment of this Act and the person has been employed in that position at the enterprise for at least 180 days—

(I) any member of the enterprise's board of directors that was not appointed and is not subject to removal by the President; or

(II) any executive officer.

(ii) The Director may notify the President of any director whom the Director would have required the enterprise to dismiss under clause (i) but for the fact that the director was appointed and subject to removal by the President. The Director shall include in such notification the grounds for removal of that Director.

(iii) Dismissal under clause (i) shall not be construed as removal under section 143.

(D) CONSERVATORSHIP.—Appoint a conservator for the enterprise.

(f) PROVISIONS APPLICABLE TO ENTERPRISES WITHIN LEVEL IV.—

(1) MANDATORY SUPERVISORY ACTIONS.—The Director shall, not alter than 30 days after determining that an enterprise is within Level IV, appoint a conservator for the enterprise and any such conservator shall have full authority, in its sole discretion, to take any actions authorized under subsections (d) and (e) not inconsistent with the powers of the conservator, and to take any other actions authorized pursuant to the provisions applicable to conservators under the applicable laws.

(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Director may modify, defer, or remove any mandatory supervisory action applicable under this section to an enterprise within Level IV if the Director determines in writing that such action is in the public interest.

(g) CAPITAL RESTORATION PLANS.—

(1) CONTENTS OF PLAN.—A capital restoration plan submitted under this section shall be a feasible plan for promptly restoring the levels of capital for all relevant capital measures of the enterprise to at least the levels required by the subsection pursuant to which the capital restoration plan is ordered. A capital restoration plan must—

(A) specify the levels of capital the enterprise will achieve and maintain;

(B) describe the steps the enterprise will take to restore each of the relevant capital measures for the enterprise to the required levels;

(C) establish a schedule for promptly completing the capital restoration plan;

(D) specify the types and levels of activities in which the enterprise will engage during the pendency of the capital restoration plan;

(E) explain the steps that the enterprise will take to comply with any mandatory and discretionary requirements imposed under the applicable laws; and

(F) be acceptable to the Director.

(2) DEADLINES FOR SUBMISSION OF CAPITAL RESTORATION PLAN.—The Director shall by regulation establish deadlines that provide enterprises a reasonable period of time, but not more than 30 days, to submit a capital restoration plan acceptable to the Director. Such regulation shall provide that the Director may extend such deadline to the extent that the Director determines necessary or appropriate.

(3) AGENCY REVIEW OF CAPITAL RESTORATION PLANS.—The Director shall review and act on a capital restoration plan not later than 30 days after the plan is submitted, except that such period may be extended by the Director.

(h) JUDICIAL REVIEW OF AGENCY ACTION.—

(1) JURISDICTION.—

(A) FILING OF PETITION.—A person aggrieved by an action of the Director under this section may obtain review of that action by filing, within ten days after receiving notice of the Director's action, a written petition requesting that the action of the Director be modified, terminated or set aside.

(B) PLACE FOR FILING.—A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the circuit in which the concerned enterprise maintains its home office. For purposes of this subparagraph, the "concerned enterprise" shall mean the enterprise whose classification within a particular zone is the basis for the Director's action of which the person aggrieved complains.

(C) PERSON AGGRIEVED DEFINED.—A "person aggrieved by the action of the Director" means—

(i) the enterprise or company that is the subject of a mandatory or discretionary supervisory action with respect to a mandatory or discretionary supervisory action taken under this section for enterprises within Levels I, II, and III;

(ii) any person dismissed, with respect to an order under this section for the dismissal of a director or executive officer; and

(iii) any person whose compensation, bonus or severance payment has been reduced or eliminated, with respect to an order under this section reducing or eliminating such payments due an executive officer.

(2) SCOPE OF REVIEW.—Action taken by the Director under this section shall be modified, terminated, or set aside only if the court finds, on the record on which the Director acted, that the Director's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

(3) UNAVAILABILITY OF INJUNCTIVE RELIEF.—The commencement of proceedings for judicial review pursuant to this subsection shall not operate as a stay of any action taken by the Director. No court shall have jurisdiction to stay, enjoin or otherwise delay agency action taken under this section pending judicial review of that action.

(4) WITHDRAWAL OF JURISDICTION.—Except as provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or effectiveness of any action of the Director under this section or to review, modify, suspend, terminate, or set aside such action.

SEC. 132. SAFE HARBOR.

(a) VOLUNTARY RATINGS.—Upon request from an enterprise, the Director shall contract with two nationally recognized statistical rating organizations—

(1) to assess the likelihood that the enterprise might not be able to meet its future obligations from its own resources and to express that likelihood as a traditional credit rating; and

(2) to review the rating of the enterprise for one year from the effective date of the rating.

(b) QUALIFICATION FOR SAFE HARBOR.—

(1) DETERMINATION BY DIRECTOR.—If, after receiving a rating from each statistical rating organization described in subsection (a), the Director determines that the enterprise merits the highest investment grade rating awarded by that organization, the enterprise shall be deemed, effective for one year following the date of the Director's determination, to meet the minimum risk-based capital levels for all relevant capital measures for purposes of section 131.

(2) WRITTEN FINDING REQUIRED.—If—

(A) each statistical rating organization described in subsection (a) assigns the enterprise the highest investment grade rating awarded by that organization, and

(B) the Director fails to make the determination described in paragraph (A),

the Director shall make a written finding detailing the reasons for the Director's failure to make such determination.

(c) EARLY TERMINATION OF SAFE HARBOR.—Subsection (b) shall cease to apply at such time as any such statistical rating organization described in subsection (a) notifies the Director, and the Director determines, that the enterprise no longer merits the highest investment grade rating awarded by that organization. The Director shall promptly notify the enterprise that the Director has received the notice described in this subsection.

(d) ASSESSMENTS FOR RATINGS.—The Director shall impose and collect an assessment on an enterprise that requests ratings under subsection (a). Such assessment shall cover the full cost to the Federal Government of obtaining the ratings.

(e) DISCRETIONARY RATINGS.—Nothing in this section shall prevent the Director from contracting with any nationally recognized statistical rating organization to rate an enterprise at any time and for any purpose that the Director deems appropriate.

(f) DEFINITION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—For purposes of this section, the term "nationally-recognized statistical rating organization" means any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers.

SEC. 133. REPORTS TO DIRECTOR.

(a) REPORTS OF CONDITION; FORM; CONTENT; DATE OF MAKING.—

(1) REGULAR REPORTS.—Each enterprise shall make to the Director quarterly reports of condition which shall be in such form, shall contain such information, and shall be made on such dates as the Director shall require.

(2) CERTIFICATION OF REPORTS.—Each report of condition shall contain a declaration by the president, a vice president, the treasurer, or by any other officer designated by the board of directors of the enterprise to make such declaration, that the report is true and correct to the best of his or her knowledge and belief. The correctness of the report of condition shall be attested by the signatures of at least three of the directors of the enterprise other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(b) ADDITIONAL AND SPECIAL REPORTS.—The Director may require additional reports, in such form and containing such information as the Director may prescribe, on dates to be fixed by the Director, and may require special reports from any particular enterprise whenever, in the Director's judgment, such reports are necessary for the Director to carry out the purposes of this title.

(c) PENALTIES.—

(1)(A) FIRST TIER.—If an enterprise—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make any report required under this paragraph, within the period of time specified by the Director, or submits any false or misleading report or information, or

(ii) inadvertently transmits any report which is minimally late,

the enterprise shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected.

(B) The enterprises shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted late.

(2) SECOND TIER.—If an enterprise fails to make any report required under this section within the period of time specified by the Director, or submits any false or misleading report or information, in a manner not described in paragraph (1) of this subsection, the enterprise shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) THIRD TIER.—Notwithstanding paragraph (2), if an enterprise knowingly or with reckless disregard for the accuracy of any information or report described in such paragraph submits any false or misleading report or information, the Director may assess a penalty of not more than $1,000,000 or 1 percent of total assets of the enterprise, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) ASSESSMENT AND COLLECTION.—Any penalty imposed under this subsection shall be assessed and collected by the Director in the manner provided in section 147(e)-(g), (i), (j) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty shall be subject to the provisions of such section.

(5) HEARING.—An enterprise shall be afforded a hearing with respect to any penalty assessed under this subsection if the enterprise submits a written request for such hearing within 20 days after the issuance of the notice of assessment. Section 145 shall apply to any proceeding under this paragraph.

(d) CAPITAL DISTRIBUTIONS.—Each enterprise shall make to the Director advance reports of any capital distributions to be declared or paid in such cases and under such conditions as the Director deems necessary, if such form and at such times as it may require.

SEC. 134. EXAMINATIONS.

(a) APPOINTMENT OF EXAMINERS.—The Director shall appoint examiners to examine the enterprises.

(b) EXAMINATIONS.—Any examiner appointed under subsection (a) shall examine such enterprise whenever the Director determines that an examination is necessary to determine the condition of the enterprise for the purpose of ensuring its financial safety and soundness.

(c) TECHNICAL EXPERTS.—The Director is authorized to contract for the services of such technical experts as the Director deems necessary and appropriate to provide temporary technical assistance to any examiner appointed under subsection (a).

(d) POWER AND DUTY OF EXAMINERS.—Each examiner apppointed under subsection (a) shall—

(1) have the power, on behalf of the Director, to make a thorough examination of any enterprise under subsection (b); and

(2) make a full and detailed report of condition of the enterprise examined to the Director.

(e) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE; SUBPOENA POWERS.—In connection with examinations of the enterprises, the Director is authorized to administer oaths and affirmations, examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any enterprise or affiliate thereof, and to exercise such other powers as are set forth in section 152.

(f) PRESERVATION OF RECORDS BY PHOTOGRAPHY.—

(1) IN GENERAL.—The Director may cause any and all records, papers, or documents kept by the Director or in the Director's possession or custody to be photographed or microphotographed or otherwise reproduced upon flim, in a manner that shall comply with the minimum standards of quality approved for permanent photographic records by the National Institute of Standards and Technology.

(2) DEEMED AS ORIGINALS.—Such photographs, microphotographs, or photographic film or copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) PRESERVATION.—Such photographs, microphotographs, or reproductions shall be preserved in such manner as the Director shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Director shall direct.

Subtitle C—General Enforcement Powers

SEC. 141. CEASE-AND-DESIST PROCEEDINGS.

(a) GROUNDS FOR ISSUANCE.—The Director may issue and serve upon an enterprise or any director or executive officer thereof a notice of charges if, in the opinion of the Director, the enterprise, director, or executive officer—

(1) is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, director, or executive officer is about to engage, in an unsafe or unsound practice in conducting the business of the enterprise; or

(2) is violating or has violated, or the Director has reasonable cause to believe that the enterprise, director, or executive officer is about to violate——

(A) a law, rule, or regulation;

(B) any condition imposed in writing by the Director in connection with the granting of any application or other request by the enterprise; or

(C) any written agreement entered into with the Director.

(b) PROCEDURE.—

(1) NOTICE OF CHARGES.—Any notice of charges shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the enterprise, director, or executive officer.

(2) DATE OF HEARING.—Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Director at the request of any party served.

(3) FAILURE TO APPEAR CONSTITUTES CONSENT.—Unless the party or parties so served appear at the hearing personally or by a duly authorized representative, such party or parties shall be deemed to have consented to the issuance of the cease-and-desist order.

(4) ISSUANCE OF ORDER.—In the event of such consent, or if, upon the record made at any such hearing, the Director shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Director may issue and serve upon the enterprise, director, or executive officer an order requiring the enterprise, director, or executive officer to cease and desist from any such violation or practice and to take affirmative action to correct the conditions resulting from any such violation or practice.

(c) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority under this section and section 142 to issue any order which requires an enterprise, or any director or executive officer thereof, to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such enterprise, director, or executive officer—

(1) to make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) the enterprise, director, or executive officer was unjustly enriched in connection with such violation or practice; or

(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;

(2) to restrict the growth of the enterprise;

(3) to dispose of any asset involved;

(4) to rescind agreements or contracts;

(5) to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(6) take such other action as the Director determines appropriate.

(d) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this section or section 142 includes the authority to place limitations on the activities or functions of the enterprise, or any director or executive officer thereof.

(e) EFFECTIVE DATE.—A cease-and-desist order shall become effective at the expiration of 30 days after the service of such order upon the enterprise, director, or executive officer concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a court of competent jurisdiction.

SEC. 142. TEMPORARY CEASE-AND-DESIST ORDERS.

(a) GROUNDS FOR ISSUANCE; SCOPE.—Whenever the Director determines that any violation, threatened violation, or unsafe or unsound practice, specified in the notice of charges served upon the enterprise, director, or executive officer pursuant to section 142(a), or the continuation thereof, is likely—

(1) to cause insolvency or significant dissipation of assets or earnings of the enterprise, or

(2) to weaken the condition of the enterprise prior to the completion of the proceedings conducted pursuant to section 141(b),

the Director may issue a temporary order requiring the enterprise, or any director or executive officer thereof, to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, or condition pending completion of such proceedings. Such order may include any requirement authorized under section 141(c).

(b) EFFECTIVE DATE.—An order issued pursuant to subsection (a) shall become effective upon service upon the enterprise, director, or executive officer and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (d), shall remain effective and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until such time as the Director dismisses the charges specified in such notice or unitl superseded by a cease-and-desist order isssued pursuant to section 141.

(c) INCOMPLETE OR INACCURATE RECORDS.—

(1) TEMPORARY ORDER.—If a notice of charges served under subsection (a) of section 141 specifies that the enterprise's books and records are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of that enterprise or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that enterprise, the Director may issue a temporary order requiring—

(A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(B) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 141.

(2) EFFECTIVE PERIOD.—Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless set aside, limited, or suspended by a court in proceedings under subsection (d), shall remain in effect and enforceable until the earlier of—

(i) the completion of the proceeding initiated under section 141 in connection with the notice of charges; or

(ii) the date the Director determines, by examination or otherwise, that the enterprise's books and records are accurate and reflect the financial condition of the enterprises.

(d) JUDICIAL REVIEW.—Within 10 days after the enterprise, director, or executive officer has been served with a temporary cease-and-desist order pursuant to this section, the enterprise, or any director or executive officer thereof, may apply to the United States district court for the judicial district in which the home office of the enterprise is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, director, or executive officer under section

141(a), and such court shall have jurisdiction to issue such injunction.

(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, apply to the United States district court for the judicial district in which the home office of the enterprise is located, or the United States District Court for the District of Columbia for an injunction to enforce such order, and, if the court finds any such violation, threatened violation, or failure to obey, it shall issue such injunction.

SEC. 143. REMOVAL AND PROHIBITION AUTHORITY.

(a) AUTHORITY TO ISSUE ORDER.—The Director may serve upon any director (other than a director appointed and subject to removal by the President) or executive officer of an enterprise a written notice of the Director's intention to remove such director or executive officer from office or to prohibit any further participation by such director or executive officer, in any manner, in the conduct of the affairs of the enterprise whenever the Director determines that—

(1) such director or executive officer has directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by the Director in connection with the grant of any application or other request by the enterprise; or

(iv) any written agreement between the enterprise and the Director;

(B) engaged or participated in any unsafe or unsound practice in connection with the enterprise; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of such director's of executive officer's fiduciary duty;

(2) by reason of the violation, practice, or breach described in any clause of paragraph (1)—

(A) the enterprise has suffered or will probably suffer financial loss or other damage; or

(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such director or executive officer; or

(B) demonstrates willful or continuing disregard by such director or executive officer for the safety or soundness of the enterprise.

(b) SUSPENSION ORDER.—

(1) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Director serves written notice under subsection (a) to any director or executive officer of an enterprise, the Director may suspend such director or executive officer from office or prohibit such director or executive officer from further participation in any manner in the conduct of the affairs of the enterprise, if the Director—

(A) determines that such action is necessary for the protection of the enterprise; and

(B) serves upon such director or executive officer written notice of the suspension order.

(2) EFFECTIVE PERIOD.—Any suspension order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

(i) the date the Director dismisses the charges with respect to such director or executive officer; or

(ii) the effective date of an order issued by the Director to such director or executive officer under subsection (a).

(3) COPY OF ORDER.—If the Director issues a suspension order under subsection (b) to any director or executive officer of an enterprise, the Director shall serve a copy of such order on the enterprise at the time such order is issued.

(c) PROCEDURE.—

(1) NOTICE.—A notice of intention to remove a director or executive officer of an enterprise from office or to prohibit such director or executive officer from participating in the conduct of the affairs of the enterprise shall contain a statement of the facts constituting grounds therefore and shall fix a time and place at which a hearing will be held thereon.

(2) DATE OF HEARING.—Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of such party and for good cause shown, or the Attorney General of the United States.

(3) FAILURE TO APPEAR DEEMED CONSENT.—Unless such party appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition.

(4) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the Director finds that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the enterprise, as the Director may deem appropriate.

(d) EFFECTIVE DATE.—Any such order shall become effective at the expiration of 30 days after service upon the enterprise and the director or executive officer (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a court of competent jurisdiction.

(e) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

(1) participate in any manner in the conduct of the affairs of any institution or agency specified in subsection (f)(1);

(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in paragraph (1);

(3) violate any voting agreement previously approved by the Director; or

(4) vote for a director, or serve or act as a director or executive officer of an enterprise.

(f) INDUSTRYWIDE PROHIBITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), any director or executive officer who, pursuant to an order issued under this section, has been removed or suspended from office in an enterprise or prohibited from participating in the conduct of the affairs of an enterprise may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(A) any insured depository institution as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

(B) any depository institution or institution treated as an insured bank under section 8(b)(3) or 8(b)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3),(b)(4)), or as a savings association under section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8));

(C) any insured credit union as defined in section 101(7) of the Fedeal Credit Union Act (12 U.S.C. 1752);

(D) any institution chartered under the Farm Credit Act of 1971;

(E) the Federal Housing Finance Board and any Federal home loan bank;

(F) the Federal National Mortgage Association;

(G) the Federal Home Loan Mortgage Corporation;

(H) the Student Loan Marketing Association;

(I) the Government National Mortgage Association;

(J) any appropriate Federal depository institutions regulatory agency; and

(K) the Resolution Trust Corporation.

(2) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any director or executive officer of an enterprise or prohibits such director or executive officer from participating in the conduct of the affairs of an enterprise, such party receives the written consent of—

(A) the Director, and

(B) the appropriate Federal financial institutions regulatory agency of the institution described in paragraph (1) in which such director or executive officer proposes to hold office or in the conduct of whose affairs such director or executive officer proposes to participate,

paragraph (1) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in such written consent. Any agency that grants such a written consent shall report such action to the Director and publicly disclose such consent.

(3) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such paragraph shall be treated as a violation of the order.

(4) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this subsection, the term "appropriate Federal financial institutions regulatory agency" means—

(A) the Secretary and the Director, in the case of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(B) the Secretary, in the case of the Government National Mortgage Association;

(C) the appropriate Federal banking ageny as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), in the case of an insured depository institution;

(D) the Secretary of the Treasury, in the case of the Student Loan Marketing Association, the Federal Housing Finance Board, and any Federal home loan bank;

(E) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971;

(F) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. §1752(7)); and

(G) the Oversight Board, in the case of the Resolution Trust Corporation.

(5) CONSULTATION BETWEEN AGENCIES.—The agencies described in paragraph (2) shall con-

sult with each other before providing any written consent authorized by paragraph (2).

(g) STAY OF SUSPENSION OR PROHIBITION.—Within ten days after any director or executive officer of an enterprise has been suspended from office or prohibited from participation in the conduct of the affairs of an enterprise under subsection (b), such director or executive officer may apply to the United States district court for the judicial district in which the home office of the enterprise is located, or the United States District Court for the District of Columbia, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director or executive officer, under subsection (a), and such court shall have jurisdiction to stay such suspension or prohibition.

(h) DIRECTORS APPOINTED BY THE PRESIDENT.—The Director may notify the President of any director of an enterprise on whom the Director would have served a notice of intention to remove the director or to prohibit the director from participating in the conduct of the affairs of the enterprise under subsection (a) but for the fact that that director was appointed and subject to removal by the President. The Director shall include in such notice the grounds for issuance of the notice of intention.

SEC. 144. SUSPENSION OR REMOVAL OF DIRECTOR OR EXECUTIVE OFFICER CHARGED WITH FELONY.

(a) SUSPENSION.—Whenever any director or executive officer of an enterprise is charged in any information, indictment, or complaint with the commission of, or participation in, a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such director or executive officer may threaten to impair public confidence in the enterprise, by written notice served upon such director or executive officer, suspend such director or executive officer from office or prohibit such director or executive officer from further participation in any manner in the conduct of the affairs of the enterprise. A copy of such notice shall also be served upon the enterprise.

(b) EFFECTIVE PERIOD.—Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Director.

(c) REMOVAL.—In the event a conviction or an agreement to enter a pre-trial diversion or other similar program is entered against such director or executive officer, and at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such director or executive officer may threaten to impair public confidence in the enterprise, issue and serve upon such director or executive officer an order removing him or her from office or prohibiting such director or executive officer from further participation in any manner in the conduct of the affairs of the enterprise except with the consent of the Director. A copy of such order shall also be served upon the enterprise, whereupon such director or executive officer shall cease to be a director or executive officer of the enterprise.

(d) DISCRETIONARY REMOVAL NOT PRECLUDED.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings to remove such director or executive officer from office or to prohibit further participation in the affairs of the enterprise pursuant to section 141(a) or (b).

(e) EFFECTIVE DATE.—Any notice of suspension or order of removal issued under this section shall remain effective and until the completion of any hearing or appeal authorized under subsection (g), unless earlier terminated by the Director.

(f) VACANCIES ON THE BOARD OF DIRECTORS.—

(1) QUORUM.—If, at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum, all powers and functions vested in, or exercisable by, such board shall vest in and be exercisable by the remaining director or directors, until such time as there shall be a quorum of the board of directors.

(2) ALL DIRECTORS SUSPENDED.—In the event all of the directors of the enterprise are suspended pursuant to this section, the Director shall appoint temporary directors pending the termination of such suspensions or until such time as the terms of the suspended directors expire and their successors take office.

(g) HEARING.—

(1) REQUEST FOR HEARING.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to subsection (a), the director or executive officer concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the enterprise by such director or executive officer does not, or is not likely to, threaten to impair public confidence in the enterprise.

(2) TIME AND PLACE OF HEARING: HEARING.—Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such director or executive officer) and place at which such director or executive officer may appear, personally or through a representative, before the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

(3) DECISION OF THE DIRECTOR.—Within 60 days of such hearing, the Director shall notify such director or executive officer whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the enterprise will be continued, terminated, or otherwise modified, or whether the order removing such director or executive officer from office or prohibiting such director or executive officer from further participation in any manner in the conduct of the affairs of the enterprise will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such director or executive officer.

(h) RULEMAKING.—The Director is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this section.

SEC. 145. HEARINGS AND JUDICIAL REVIEW.

(a) Any hearing provided for in this subtitle (other than the hearing provided for in section 144)—

(1) shall be held in the Federal judicial district or in the territory in which the home office of the enterprise is located unless the party afforded the hearing consents to another place; and

(2) shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code (5 U.S.C. §§500 et seq.).

(b)(1) After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subtitle.

(2) Judicial review of any such order shall be exclusively as provided in subsection (c). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subsection (c), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(c)(1) Any party to any proceeding under subsection (a) may obtain a review of any order served pursuant thereto (other than an order issued with the consent of the enterprise, director, or executive officer concerned, or an order issued under section 144) by the filing in the court of appeals of the United States for the circuit in which the home office of the enterprise is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director.

(2) Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(3) Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall except as provided in the last sentence of subsection (b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(4) Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(d) NO AUTOMATIC STAY.—The commencement of proceedings for judicial review under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

SEC. 146. JURISDICTION AND ENFORCEMENT.

(a) APPLICATION FOR ENFORCEMENT.—The Director may, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the enterprise is located, for the enforcement of any effective notice or order issued under this subtitle or section 131 of subtitle B, and such court shall have jurisdiction and power to order and require compliance herewith.

(b) LIMITATION ON MODIFICATION.—Except as otherwise provided in this subtitle no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

SEC. 147. CIVIL MONEY PENALTY.

(a) FIRST TIER.—An enterprise which, and any director or executive officer thereof who—

(1) violates any law or regulation,

(2) violates any final order or temporary order issued pursuant to section 141, 142, 143, 144, or any final order under section 131 of subtitle B,

(3) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by an enterprise, or

(4) violates any written agreement between an enterprise and the Director,

shall be subject to a civil penalty of not more than $5,000 for each day during which such violation continues.

(b) SECOND TIER.—Notwithstanding subsection (a), an enterprise which, and any director or executive officer thereof who—

(1)(A) commits any violation described in any clause of subsection (a),

(B) recklessly engages in an unsafe or unsound practice in conducting the affairs of an enterprise, or

(C) breaches any fiduciary duty, and

(2) which violation, practice, or breach—

(A) is part of a pattern of misconduct,

(B) causes or is likely to cause more than a minimal loss to the enterprise, or

(C) results in pecuniary gain or other benefit to such party,

shall be subject to a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(c) THIRD TIER.—Notwithstanding subsections (a) and (b), an enterprise which, and any director or executive officer thereof who—

(1) knowingly—

(A) commits any violation described in subsection (a),

(B) engages in any unsafe or unsound practice in conducting the affairs of an enterprise, or

(C) breaches any fiduciary duty, and

(2) knowingly or recklessly causes a substantial loss to the enterprise or a substantial pecuniary gain or other benefit to such director or executive officer by reason of such violation, practice, or breach,

shall be subject to a civil penalty in an amount not to exceed the applicable maximum amount determined under subsection (d) for each day during which such violation, practice, or breach continues.

(d) MAXIMUM AMOUNTS OF PENALTIES.—The maximum daily amount of any civil penalty which may be assessed pursuant to subsection (c) for any violation, practice, or breach described in such subsection is—

(1) in the case of any director or executive officer, an amount not to exceed $1,000,000; and

(2) in the case of an enterprise, an amount not to exceed the lesser of—

(A) $1,000,000, or

(B) one percent of the total assets of such enterprise.

(e) ASSESSMENT.—

(1) WRITTEN NOTICE.—Any penalty imposed under this section may be assessed and collected by the Director by written notice.

(2) FINALITY OF ASSESSMENT.—If a hearing is not timely requested pursuant to subsection (h), the penalty assessment contained in a written notice shall constitute a final and unappealable order.

(f) AUTHORITY TO MODIFY OR REMIT PENALTY.—

(1) PRIOR TO COLLECTION ACTION.—Prior to initiation of an action pursuant to subsection (i)(1), the Director may compromise, modify, or remit any penalty which is or may be assessed under this section.

(2) AFTER INITIATION OF COLLECTION ACTION.—Following the initiation of an action pursuant to subsection (i)(1), the Director may compromise, modify, or remit any penalty which is or may be assessed under this section with the prior consent of the Attorney General.

(g) MITIGATING FACTORS.—In determining the amount of any penalty under this section, the Director shall take into account the appropriateness of the penalty with respect to—

(1) the size of financial resources and good faith of the enterprise, director, or executive officer charged;

(2) the gravity of the violation;

(3) the history of previous violations; and

(4) such other matters as justice may require.

(h) HEARING.—The enterprise, director or executive officer against whom any penalty is assessed under this section shall be afforded an agency hearing if such enterprise, director, or executive officer submits a request for such hearing within 20 days after the issuance of the notice of assessment. A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to this subsection.

(i) COLLECTION.—

(1) REFERRAL.—If the enterprise, director, or executive officer fails to pay a penalty that has become final, the Director shall, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, recover the amount assessed by action in the appropriate United States district court.

(2) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any action brought under paragraph (1), the validity and appropriateness of the penalty shall not be subject to review.

(j) DISBURSEMENT.—All penalties collected under authority of this section shall be deposited into the General Fund of the Treasury.

(k) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

SEC. 148. NOTICE UNDER THIS SUBTITLE AFTER SEPARATION FROM SERVICE.

The resignation, termination of employment or participation, or separation of a director or executive officer of an enterprise (including a separation caused by the closing of the enterprise) shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subtitle against any such director or executive officer, if such notice is served before the end of the six-year period beginning on the date such director or executive officer ceased to be associated with the enterprise.

SEC. 149. CRIMINAL PENALTY.

Whoever, being subject to an order in effect under section 143 or 144, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in section 143(e)) in the conduct of the affairs of any institution or agency specified in section 143(f) shall be fined not more than $1,000,000 imprisoned for not more than 5 years, or both. Such fine shall be deposited in the General Fund of the Treasury.

SEC. 150. NOTICE OF SERVICE.

Any service required or authorized to be made by the Director under this subtitle may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

SEC. 151. SUBPOENA POWER, ETC.

(a) POWERS.—

(1) In the course of or in connection with any administrative proceeding under this subtitle, the Director shall have the power—

(A) to administer oaths and affirmations,

(B) to take or cause to be taken depositions,

(C) to issue subpoenas and subpoenas duces tecum, and

(D) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

(b) The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

(c) RULEMAKING AUTHORITY.—The Director is authorized to make such rules and regulations as the Director determines necessary or appropriate with respect to proceedings, claims, examinations, or investigations.

(d) ENFORCEMENT.—The Director, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith.

(e) FEES AND EXPENSES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by the enterprises or a director or executive officer thereof may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the enterprises or from its assets.

SEC. 152. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) IN GENERAL.—The Director shall publish and make available to the public—

(1) any written agreement or other written statement for which a violation may be enforced by the Director, unless the Director, in the Director's discretion, determines that publication would be contrary to the public interest;

(2) any final order issued with respect to any administrative enforcement proceeding initiated by the Director under this subtitle or any other provision of law; and

(3) any modification to or termination of any final order or agreement made public pursuant to this paragraph.

(b) TRANSCRIPTS OF HEARINGS.—A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(c) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Director makes a determination in writing that the publication of any final order pursuant to subsection (a) would seriously threaten the safety or soundness of the enterprise, the Director may delay the publication of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Director may file any document or part thereof under seal in any administrative enforcement hear-

ing commenced by the Director if, as determined by the Director in writing, disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The Director shall keep and maintain a record, for not less than six years, of all documents described in subsection (a) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceedings initiated by the Director under this Chapter or any other laws.

(f) DISCLOSURES TO CONGRESS.—No provsion of this section shall be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

Subtitle D—Conservatorship

SEC. 161. APPOINTMENT OF CONSERVATOR.

(a) APPOINTMENT.—The Director may, without notice or prior hearing, appoint a conservator, which may be the Director, to take possession and control of an enterprise whenever the Director determines—

(1) that the enterprise is not likely to pay its obligations in the normal course of business;

(2) that the enterprise is in an unsafe or unsound condition to transact business, including having substantially insuffcient capital or otherwise;

(3)(A) that the enterprise has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and

(B) there is no reasonable prospect for the enterprise's capital to be replenished without Federal assistance;

(4) that there is any violation of laws, rules, or regulations, or any unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the enterprise's condition;

(5) that there is concealment of books, papers, records, or assets of the enterprise, or refusal to submit books, papers, records, or affairs of the enterprise for inspection to any examiner or to any lawful agent of the Director;

(6) that there is a willful or continuing violation of an order enforceable against the enterprise under 146; or

(7) that the enterprise is classified within Level III or IV by the Director pursuant to section 131 of subtitle B.

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—

(A) Not later than 20 days after the initial appointment of a conservator pursuant to this section, the enterprise may bring an action in the United States district court for the judicial district in which the home office of such enterprise is located, or in the United States District Court for the District of Columbia, for an order requiring the Director to terminate the appointment of the conservator.

(B) The Director's decision to appoint a conservator pursuant to this section shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) STAY.—

(A) IN GENERAL.—The conservator may request that any judicial action or proceeding to which the conservator or the enterprise is or may become a party be stayed for a period of up to 45 days after the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

(B) DIRECTOR OR FEDERAL AGENCY AS CONSERVATOR.—In any case in which the conservator is the Director, a Federal agency, or an employee of the Federal Government, the conservator may make a request described in paragraph (a) only with the prior consent of the Attorney General and subject to the Attorney General's direction and control.

(3) ACTIONS AND ORDERS.—

(A) LIMITATION ON REMEDIES.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of, a conservator.

(B) ENFORCEMENT OF ORDERS.—The Director, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, may apply to a court, which shall have the jurisdiction, to enforce an order of the Director relating to—

(i) the conservatorship and the enterprise in conservatorship; or

(ii) restraining or affecting the exercise of powers or functions of a conservator.

(c) APPOINTMENT BY CONSENT.—The Director may appoint a conservator for an enterprise if the enterprise, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

(d) EXCLUSIVE AUTHORITY.—The Director shall have exclusive power and jurisdiction to appoint a conservator for the enterprise.

(1) As a conservator, the Director shall have all the powers granted under the applicable law, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators under this subtitle and any other provision of law.

(2) Any other person appointed as a conservator shall be subject to the provisions of this subtitle.

(e) REPLACEMENT OF CONSERVATOR.—The Director may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the enterprise's right under subsection (b) to obtain judicial review of the Director's original decision to appoint a conservator.

SEC. 162. EXAMINATIONS.

The Director is authorized to examine and supervise any enterprise in conservatorship as long as the enterprise continues to operate as a going concern.

SEC. 163. TERMINATION OF CONSERVATORSHIP.

(a) GENERAL RULE.—At any time the Director becomes satisfied that it may safetly be done that it would be in the public interest, the Director may terminate the conservatorship and permit the enterprises to resume the transaction of its business subject to such terms, conditions, and limitations as the Director may prescribe.

(b) ENFORCEMENT AS FINAL CEASE-AND-DESIST ORDER.—

(1) Such terms, conditions, and limitations as may be prescribed under subsection (a) shall be enforceable under the provisions of section 146, to the same extent as an order issued pursuant to section 141 which has become final.

(2) An enterprise may bring an action in the United States district court for the judicial district in which the home office of such enterprise is located or in the United States District Court for the District of Columbia for an order requiring the Director to terminate the order.

(3) An action for judicial review of the terms, conditions, and limitations contained in any order may not be commenced later than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

SEC. 164. CONSERVATOR; POWERS AND DUTIES.

(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the enterprises and may operate the enterprises in its own name unless the Director, in the order of appointment, limits the conservator's authority.

(b) SUBJECT TO RULES OF DIRECTOR.—Any conservator shall be subject to such rules, regulations, and orders as the Director from time to time deems appropriate and, except as otherwise specifically provided in such rules, regulations, or orders or in section 165, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to directors, officers, or employees of the enterprise.

(c) PAYMENT OF CREDITORS.—The Director may require the conservator to set aside and make available for payment to creditors such amounts as in the opinion of the Director may safely be used for that purpose. All creditors who are similarly situated shall be treated in the same manner.

(d) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—Any conservator (other than the Director) and professional employees (other than Federal employees) appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Director may authorize payment at higher rates (but not in excess of rates prevailing in the private sector), if the Director determines that paying such higher rates is necessary in order to recruit and retain competent personnel.

(e) EXPENSES.—All expenses of any such conservatorship shall be paid by the enterprise and shall be a lien upon the enterprise which shall have priority over any other lien.

SEC. 165. LIABILITY PROTECTION.

(a) FEDERAL AGENCY AND EMPLOYEES.—In any case in which the conservator is the Director, as Federal agency, or an employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct, as determined by a court.

(c) INDEMNIFICATION.—The Director, with the approval of the Attorney General, shall have authority to indemnify the conservator on such terms as the Director deems proper.

SEC. 166. POWERS OF OFFICERS NOT AFFECTED.

Nothing in this subtitle shall be construed to impair in any manner any power of the President, the Secretary of the Treasury, the Director, or the Attorney General.

SEC. 167. RULES AND REGULATIONS.

The Director may prescribe such rules and regulations as the Director may deem necessary to carry out the provisions of this title.

TITLE II—PRIMACY OF FINANCIAL SAFETY AND SOUNDNESS FOR THE FEDERAL HOUSING FINANCE BOARD

SEC. 201. AMENDMENT TO THE FEDERAL HOME LOAN BANK ACT.

Section 2A(a)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1422a(a)(3)) is amended to read as follows:

"(3) DUTIES.—

"(A) SAFETY AND SOUNDNESS AS PRIMARY DUTY.—The primary duty of the Board shall be to ensure that the Federal Home Loan Banks operate in a financially safe and sound manner.

"(B) OTHER DUTIES.—To the extent consistent with subparagraph (A), the duties of the Board shall also be—

(i) to supervise the Federal Home Loan Banks;

(ii) to ensure that the Federal Home Loan Banks carry out their housing finance missions; and

(iii) to ensure that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets.".

TITLE III—IMPROVEMENT OF SUPERVISION AND REGULATION OF THE STUDENT LOAN MARKETING ASSOCIATION

SEC. 301. FINDINGS.

The Congress finds that—

(a) The Student Loan Marketing Association has an important public mission, as reflected in its Federal charter;

(b) Because the continued ability of the Association to accomplish its public mission is important to health of the United States economy, more effective Government regulation is needed to provide sustained outside discipline and thereby reduce the risk of failure; and

(c) The regulatory framework of the Association should embody the following principles—

(1) financial safety and soundness should be given primacy over other public policy considerations in the regulation of the Association;

(2) the regulator should have sufficient stature to maintain independence from the Association and special interest groups;

(3) private market risk assessment mechanisms can help the regulator assess the financial safety and soundness of the Association; and

(4) the basic statutory authorities for financial safety and soundness regulation should be consistent across all Government-sponsored enterprises; therefore, the regulator should have the authority, among others, to establish capital standards; require financial disclosure; if necessary, prescribe adequate standards for books and records and other internal controls; conduct examinations; and enforce compliance with the standards and rules that it establishes.

SEC. 302. DEFINITIONS.

As used in this title—

(a) ASSOCIATION.—The term "Association" means the Student Loan Marketing Association.

(b) CAPITAL.—The term "capital" means, as determined in accordance with generally accepted accounting principles, the sum of—

(1) the par value of outstanding common stock,

(2) the par value of outstanding preferred stock,

(3) paid-in capital, and

(4) retained earnings.

(c) CAPITAL DISTRIBUTION.—The term "capital distribution" means—

(1) a dividend or other distribution in cash or in kind made with respect to any shares or other ownership interest of the Association, except a dividend consisting only of shares of the Association;

(2) a payment made by the Association to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an affiliated company's acquisition of such shares; or

(3) a transition that the Secretary determines by order or regulation to be in substance the distribution of capital.

(d) COMPENSATION.—The term "compensation" means any payment of money or provision of any other thing of current or potential value in connection with employment.

(e) EXECUTIVE OFFICER.—The term "executive officer" of an enterprise means—

(1) the chief executive officer;

(2) the chief financial officer; or

(3) any other person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the enterprise whether or not the person—

(A) has an official title;

(B) has a title designating the person an assistant; or

(C) is serving without compensation.

(f) SECRETARY.—The term "Secretary" shall mean the Secretary of the Treasury.

Subtitle A—Establishment of Financial Safety and Soundness Regulator

SEC. 311. ANNUAL REPORTS.

Not later than April 15 of each year beginning in 1992, the Secretary shall make a written report to the Congress setting out—

(a) the steps the Secretary has taken and is taking to implement the provisions of this title;

(b) the financial safety and soundness of the Association; and

(c) any recommendations for amendment of this title or any other law affecting the financial safety and soundness of the Association.

SEC. 312. FUNDING.

(a) ASSESSMENTS, FEES, AND OTHER CHARGES.—The Secretary is authorized to impose and collect assessments, fees, and other charges on the Association as necessary or appropriate to carry out the Secretary's responsibilities for the Association. Such assessments, fees, and other charges shall be set to meet the full cost to the Federal Government of the services provided by the Secretary in carrying out such responsibilities.

(b) TREASURY ACCOUNT.—There is hereby established in the Treasury a separate fund in to which the assessments, fees, and other charges collected pursuant to subsection (a) shall be deposited and immediately available to carry out the responsibilities of the Secretary described in subsection (a) without regard to fiscal year limitation.

SEC. 313. AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965.

Section 439 of the Higher Education Act of 1965, as amended, (20 U.S.C. 1087-2) is amended—

(a) in subsection (h)(2), by striking "or the Secretary of the Treasury" in the second sentence;

(b) in subsection (h)(4), by striking "or the Secretary of the Treasury" both times it appears in the first sentence and by striking "and the Secretary of the Treasury"in the second sentence; and

(c) by striking subsection (k) and by redesignating subsections (l) through (q) as (k) through (p).

Subtitle B—Capital Levels and Special Enforcement Powers

SEC. 321. CAPITAL ADEQUACY AND PROMPT CORRECTIVE ACTION.

(a) CLASSIFICATION ACCORDING TO CAPITAL SUFFICIENCY.—

(1) ESTABLISHMENT OF RELEVANT CAPITAL MEASURES AND MINIMUM RISK-BASED CAPITAL LEVELS.—

(A) ESTABLISHMENT BY SECRETARY.—To satisfy the criteria specified in subparagraph (B), the Secretary shall by regulation establish—

(i) relevant capital measures; and

(ii) minimum risk-based capital levels for each such relevant capital measure.

(B) CRITERIA FOR MINIMUM RISK-BASED CAPITAL LEVEL.—The relevant capital measures and corresponding minimum risk-based capital levels established by the Secretary shall ensure that the total capital of the Association—

(i) exceeds the leverage limit specified in paragraph (2); and

(ii) equals, as determined by the Secretary, the sum of—

(I) an amount of capital sufficient to enable the Association to maintain positive capital to cover for interest rate risk and credit risk, independently, under stressful economic circumstances determined by the Secretary.

(II) an amount of capital sufficient to protect against management risk, operations risk, and business risk; and

(III) an amount of capital sufficient to provide capital coverage at the margin for proposed new programs or lines of business whose risk characteristics are uncertain.

(2) LEVERAGE LIMIT.—

(A) STATUTORY FLOOR.—For purposes of this section, the leverage limit shall be a level of capital equal to the sum of—

(i) 2 percent of total on-balance sheet assets; and

(ii) such percentage of off-balance sheet obligations as the Secretary may establish by regulation.

(B) DISCRETIONARY UPWARD ADJUSTMENT.—The Secretary may by regulation establish a leverage limit above the level specified in subparagraph (A).

(3) CRITICAL CAPITAL LEVEL.—For purposes of this section, the critical capital level shall be a level of capital equal to the sum of—

(A) 1.00 percent of total on-balance sheet assets; and

(B) such percentage of off-balance sheet obligations as the Secretary may establish by regulation.

(4) USE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—For the purposes paragraphs (2) and (3), "on-balance sheet assets" and "off-balance sheet obligations" shall be determined according to generally accepted accounting principles.

(5) EFFECTIVE DATES.—

(A) ESTABLISHMENT OF MINIMUM RISK-BASED CAPITAL LEVELS.—The Secretary shall establish the relevant capital measures and capital levels required under paragraph (1) no later than one year after the date of enactment of this Act.

(B) PHASE-IN FOR LEVELS I AND II.—The provisions of this section that authorize the Secretary to take action by reason of the Association falling within Levels I or II shall become effective three years after the enactment of this Act.

(C) PHASE-IN FOR LEVEL III.—The provisions of this section that authorize the Secretary to take action by reason of the Association falling within Level III shall become effec-

tive one year after the date of enactment of this Act.

(6) DEFINITION OF CAPITAL LEVELS.—Unless otherwise reclassified pursuant to paragraph (7), for purposes of this section—

(A) LEVEL I.—The Association shall be within Level I if it—

(i) maintains capital that is below the minimum risk-based capital level for any relevant capital measure; and

(ii) is not within Levels II, III, and IV;

(B) LEVEL II.—The Association shall be within Level II if it—

(i) maintains capital that is significantly below the minimum risk-based capital level for any relevant capital measure but that is at or exceeds the leverage limit; or

(ii) is otherwise classified within Level II under the provisions of this section;

(C) LEVEL III.—The Association shall be within Level III if it—

(i) maintains capital that is below the leverage limit but that is at or exceeds the critical capital level; or

(ii) is otherwise classified within Level III under the provisions of this section; and

(D) LEVEL IV.—The Association shall be within Level IV if it maintains capital below the critical capital level.

(7) RECLASSIFICATION.—Unless the Association is within Level IV, the Secretary may reclassify it to Level III if the Secretary determines that the Association is in an unsafe and unsound condition or engaging in an unsafe or unsound practice.

(b) REGULATIONS AND OTHER AUTHORITY.—

(1) IN GENERAL.—The Secretary shall promulgate regulations and take such other actions as are necessary to implement the provisions of this section and is authorized to issue orders and take such other actions as are necessary or appropriate to carry out the purposes of this section.

(2) CAPITAL LEVELS.—Consistent with the purposes of this section, the Secretary shall by regulation specify the applicable capital levels for each relevant capital measure in each capital level established by this section.

(3) APPROVAL OF ACTIVITIES.—Whenever the Association is within Level I, II, III or IV, the Association may undertake an activity pursuant to subsections (d), (o), (p) and (q) of section 439 of the Higher Education Act of 1965 only with the approval of the Secretary, as provided in this section.

(c) MANDATORY SUPERVISORY ACTIONS APPLICABLE WHEN THE ASSOCIATION IS WITHIN LEVEL I.—

(1) RESTRICTIONS ON EXPANSION.—

(A) EXPANSION RESULTING IN RECLASSIFICATION.— The Secretary shall not approve or permit—

(i) any investment or other activity subject to approval by the Secretary that would result in reclassification of the Association from Level I to Level II or III, unless the Secretary finds that the transaction substantially improves the financial condition of the Association or is consistent with a capital restoration plan approved by the Secretary; and

(ii) any investment or other activity subject to approval by the Secretary that would result in reclassification to Level IV.

(B) UNSAFE AND UNSOUND PRACTICES OR CONDITION.—The Secretary shall not approve any investment or other activity when the Association is within Level I if the Secretary determines that the Association is engaging in an unsafe and unsound practice or is in an unsafe and unsound condition.

(2) CAPITAL DISTRIBUTION.—

(A) LIMITATION.—When within Level I, the Association shall make no capital distribution that would cause the Association to be reclassified within Levels III or IV. The Association may make a capital distribution that would cause the Association to be reclassified to Level II, if the Association provides the Secretary with written notice pursuant to section 322(d) and the Secretary has issued a notice of approval.

(B) STANDARDS FOR APPROVAL.—The Secretary shall approve payment of a capital distribution by the Association under this paragraph only if the Secretary determines that the capital distribution will enhance the Association's ability to meet the minimum risk-based capital levels for all relevant capital measures or that the distribution is otherwise in the public interest.

(3) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Secretary may modify, defer, or remove any mandatory supervisory action applicable under this section to the Association within Level I if the Secretary determines in writing that such action is in the public interest.

(d) PROVISIONS APPLICABLE WHEN THE ASSOCIATION IS WITHIN LEVEL II.—

(1) MANDATORY SUPERVISORY ACTIONS.—

(A) CAPITAL RESTORATION PLAN.—When within Level II, the Association shall, within the time period provided in subsection (g), submit to the Secretary and, after its acceptance, implement a capital plan that meets the requirements of subsection (g) and will restore the relevant capital measures of the Association to at least the levels required for classification within Level I.

(B) RESTRICTION ON CAPITAL DISTRIBUTION.—

(i) PRIOR APPROVAL REQUIRED.—When within Level II, the Association shall make no capital distribution that would cause the Association to be reclassified within Levels III or IV. When within Level II, the Association shall make no other capital distribution unless the Association receives the prior approval of the Secretary.

(ii) STANDARDS FOR APPROVAL.—The Secretary may approve payment of a capital distribution by the Association within Level II only if the Secretary determines that the capital distribution will enhance the ability of the Association promptly to meet the minimum risk-based capital levels for all relevant capital measures or is otherwise in the public interest.

(C) RESTRICTION ON EXPANSION.—The Secretary shall not approve or permit any investment or other activity subject to approval by the Secretary by the Association within Level II unless the Secretary finds that the transaction furthers achievement of the capital restoration plan approved by the Secretary for the Association.

(D) RECLASSIFICATION FROM LEVEL II TO LEVEL III.—The Association shall immediately be reclassified from Level II to Level III, and shall be subject to all of the provisions applicable to the Association within Level III, if—

(i) the Association does not submit the capital restoration plan required in subparagraph (A) within the time required by the Secretary; or

(ii) the Secretary is not satisfied that the Association is making every effort in good faith to fulfill completely the capital plan within the schedule approved by the Secretary.

(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Secretary may modify, defer, or remove any mandatory supervisory action applicable under this section to the Association within Level II if the Secretary determines in writing that such action is in the public interest.

(3) DISCRETIONARY SUPERVISORY ACTIONS.—In addition to any other authority of the Secretary, the Secretary may, at any time, based upon a finding that the Association is within Level II—

(A) LIMIT INCREASE IN LIABILITIES.—Limit any increase in, or order the reduction of, any liabilities of the Association.

(B) RESTRICT GROWTH.—Restrict or eliminate growth of the Association's assets, or require contraction of the Association's assets.

(C) RESTRICT DISTRIBUTIONS.—Restrict the Association from making any capital distribution.

(D) REQUIRE ISSUANCE OF NEW CAPITAL.—Require the Association to issue new capital in any form and in any amount sufficient to restore the Association to at least the capital levels required for Level I.

(E) RESTRICT ACTIVITIES.—Require the Association to terminate, reduce or alter any activity, if the Secretary determines that the activity creates excessive risk to the Association.

(F) LIMIT EXECUTIVE COMPENSATION.—Require the Association to reduce or eliminate any or all of the following for any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the Association following enactment of this Act—

(i) any bonus;

(ii) any compensation at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months; and

(iii) any payment that is or would be due under any employment severance contract.

(e) PROVISIONS APPLICABLE WHEN THE ASSOCIATION IS WITHIN LEVEL III.—

(1) MANDATORY SUPERVISORY ACTIONS.—

(A) CAPITAL RESTORATION PLAN.—Unless the Association within Level III has submitted a capital restoration plan acceptable to the Secretary pursuant to subsection (e), it shall, within the time provided under subsection (g), submit to the Secretary and, after its acceptance, implement a capital plan that meets the requirements of subsection (g) and will restore the relevant capital measures of the Association to at least the levels required for classification within Level I.

(B) PROHIBITION ON CAPITAL DISTRIBUTIONS.—When within Level III, the Association shall make no capital distribution.

(C) PROHIBITION ON EXPANSION.—When within Level III, the Association shall not engage directly or indirectly in any new investment or activity.

(D) LIMITATION ON ASSET GROWTH.—

(i) When within Level III, the Association shall not increase its total assets, except as permitted under clause (ii).

(ii) Notwithstanding clause (i), the Secretary may permit the Association within Level III to increase its total assets if—

(I) the Secretary has accepted the Association's capital restoration plan;

(II) any increase in assets is accompanied by an increase in capital in an amount not less than the increase in assets multiplied by the respective relevant capital measures for Level I; and

(III) the Association's capital levels increase at a rate sufficient to enable the Association to satisfy its capital restoration plan within a reasonable time.

(E) LIMITATION ON COMPENSATION.—When within Level III, the Association may not pay to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an

executive officer at the Association following enactment of this Act—

(i) any bonus:

(ii) any compensation at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months; or

(iii) any payment that is or would be due under any employment severance contract.

(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Secretary may modify, defer, or remove any mandatory supervisory action authorized by this section from the Association within Level III if the Secretary determines in writing that such action is in the public interest.

(3) DISCRETIONARY SUPERVISORY ACTION.—In addition to any other authority of the Secretary, the Secretary may, at any time, take any of the following actions based upon a finding that the Association is within Level III—

(A) DISCRETIONARY SUPERVISORY ACTIONS PERMITTED UNDER LEVEL I OR LEVEL II.—Take any discretionary supervisory action authorized under subsection (e)(3) in connection with the Association within Level III.

(B) LIMIT EXECUTIVE COMPENSATION.—Require the Association to reduce or eliminate any compensation to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the Association following enactment of this Act if the Secretary determines the compensation to be excessive.

(C) DISMISS DIRECTORS OR CHIEF OFFICERS.—

(i) Require the Association to dismiss from office at the Association any or all of the following persons if the peson accepted employment, accepted a new position, or renewed any contract for employment in the same position at the Association following enactment of this Act and the person has been employed in that position at the Association for at least 180 days—

(I) any member of the Association's board of directors that was not appointed and is not subject to removal by the President; or

(II) any executive officer.

(ii) The Secretary may notify the President of any director whom the Secretary would have required the Association to dismiss under clause (i) but for the fact that that director was appointed and subject to removal by the President. The Secretary shall include in such notification the grounds for removal of that director.

(iii) Dismissal under clause (i) shall not be construed as removal under section 333 of this Act.

(D) CONSERVATORSHIP.—Appoint a conservator for the Association.

(f) PROVISIONS APPLICABLE WHEN THE ASSOCIATION IS WITHIN LEVEL IV.—

(1) MANDATORY SUPERVISORY ACTIONS.—The Secretary shall, not later than 30 days after determining that the Association is within Level IV, appoint a conservator for the Association and any such conservator shall have full authority, in its sole discretion, to take any actions authorized under subsections (e) and (f) not inconsistent with the powers of the conservator, and to take any other actions authorized pursuant to the provisions applicable to conservators under the applicable laws.

(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The Secretary may modify, defer, or remove any mandatory supervisory action applicable under this section to the Association within Level IV if the Secretary determines in writing that such action is in the public interest.

(g) CAPITAL RESTORATION PLANS.—

(1) CONTENTS OF PLAN.—A capital restoration plan submitted under this section shall be a feasible plan for promptly restoring the levels of capital for all relevant capital measures of the Association to at least the levels required by the subsection pursuant to which the capital restoration plan is ordered. A capital restoration plan must—

(A) specify the levels of capital the Association will achieve and maintain;

(B) describe the steps the Association will take to restore each of its relevant capital measures to the required levels;

(C) establish a schedule for promptly completing the capital restoration plan;

(D) specify the types and levels of activities in which the Association will engage during the pendency of the capital restoration plan;

(E) explain the steps that the Association will take to comply with any mandatory and discretionary requirements imposed under the applicable laws; and

(F) be acceptable to the Secretary.

(2) DEADLINES FOR SUBMISSION OF CAPITAL RESTORATION PLAN.—The Secretary shall by regulation establish deadlines that provide the Association a reasonable period of time, but not more than 30 days, to submit a capital restoration plan acceptable to the Secretary. Such regulation shall provide that the Secretary may extend the deadline to the extent the Secretary determines necessary or appropriate.

(3) AGENCY REVIEW OF CAPITAL RESTORATION PLANS.—The Secretary shall review and act on a capital restoration plan not later than 30 days after the plan is submitted, except that such period may be extended by the Secretary.

(h) JUDICIAL REVIEW OF AGENCY ACTION.—

(1) JURISDICTION.—

(A) FILING OF PETITION.—A person aggrieved by an action of the Secretary under this section may obtain review of that action by filing, within ten days after receiving notice of the Secretary's action, a written petition requesting that the action of the Secretary be modified, terminated or set aside.

(B) PLACE FOR FILING.—A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(C) PERSON AGGRIEVED DEFINED.—A person aggrieved by the action of the Secretary under this section shall mean—

(i) the Association when it is the subject of a mandatory or discretionary supervisory action with respect to a mandatory or discretionary supervisory action taken under this section when the Association is within Levels I, II, and III;

(ii) any person dismissed, with respect to an order under this section for the dismissal of a director of executive officer; and

(iii) any person whose compensation, bonus or severance payment has been reduced or eliminated, with respect to an order under this section reducing or eliminating such payments due an executive officer.

(2) SCOPE OF REVIEW.—Action taken by the Secretary under this section shall be modified, terminated, or set aside only if the court finds, on the record on which the Secretary acted, that the Secretary's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(3) UNAVAILABILITY OF INJUNCTIVE RELIEF.—The commencement of proceedings for judicial review pursuant to this subsection shall not operate as a stay of any action taken by the Secretary. No court shall have jurisdiction to stay, enjoin or otherwise delay agency action taken under this section pending judicial review of that action.

(4) WITHDRAWAL OF JURISDICTION.—Except as provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or effectiveness of any action of the Secretary under this section or to review, modify, suspend, terminate, or set aside such action.

SEC. 322. REPORTS TO SECRETARY.

(a) REPORTS OF CONDITION; FORM; CONTENTS; DATE OF MAKING.—

(1) REGULAR REPORTS.—The Association shall make to the Secretary quarterly reports of condition which shall be in such form, shall contain such information, and shall be made on such dates as the Secretary shall require.

(2) CERTIFICATION OF REPORTS.—Each report of condition shall contain a declaration by the president, a vice president, the treasurer, or by any other officer designated by the board of directors of the Association to make such declaration, that the report is true and correct to the best of his or her knowledge and belief. The correctness of the report of condition shall be attested by the signatures of at least three of the directors of the Association other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(b) ADDITIONAL AND SPECIAL REPORTS.—The Secretary may require additional reports, in such form and containing such information as the Secretary may prescribe, on dates to be fixed by the Secretary, and may require special reports however, in the Secretary's judgement, such reports are necessary for the Secretary to carry out the purposes of this title.

(c) PENALTIES.—

(1)(A) FIRST TIER.—If the Association—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make any report required under this paragraph, within the period of time specified by the Secretary, or submits any false or misleading report or information, or

(ii) inadvertently transmits any report which is minimally late,

the Association shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected.

(B) The Association shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted late.

(2) SECOND TIER.—If the Association fails to make any report required under this section within the period of time specified by the Secretary, or submits any false or misleading report or information in a manner not described in paragraph (1) of this subsection, the Association shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) THIRD TIER.—Notwithstanding paragraph (2), if the Association knowingly or with reckless disregard for the accuracy of any information or report described in such paragraph submits any false or misleading report or information, the Secretary may assess a penalty of not more than $1,000,000 or one percent of total assets of the Association, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) ASSESSMENT AND COLLECTION.—Any penalty imposed under this subsection shall be assessed and collected by the Secretary in

the manner provided in section 337 (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(5) HEARING.—The Association shall be afforded an agency hearing with respect to any penalty assessed under this subsection if the Association submits a written request for such hearing within 20 days after the issuance of the notice of assessment. Section 335 shall apply to any proceeding under this paragraph.

(d) CAPITAL DISTRIBUTIONS.—The Association shall make to the Secretary reports of any capital distributions to be declared or paid in such cases and under such conditions as the Secretary deems necessary, in such form and at such times as the Secretary may require.

SEC. 323. EXAMINATIONS.

(a) APPOINTMENT OF EXAMINERS.—The Secretary shall appoint examiners to examine the Association.

(b) EXAMINATIONS.—Any examiner appointed under subsection (a) shall examine the Association whenever the Secretary determines that an examination is necessary to determine the condition of the Association for the purpose of ensuring its financial safety and soundness.

(c) TECHNICAL EXPERTS.—The Secretary is authorized to contract for the services of such technical experts as the Secretary deems necessary and appropriate to provide temporary technical assistance to any examiner appointed under subsection (a).

(d) POWER AND DUTY OF EXAMINERS.—Each examiner appointed under subsection (a) shall—

(1) have power, on behalf of the Secretary, to make a thorough examination of the Association under subsection (b); and

(2) make a full and detailed report of condition of the Association or affiliate examined to the Secretary.

(e) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE; SUBPOENA POWERS.—In connection with examinations of the Association, the Secretary is authorized to administer oaths and affirmations, to examine, and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of the Association, and to exercise such other powers as are set forth in section 341.

(f) PRESERVATION OF RECORDS BY PHOTOGRAPHY.—

(1) IN GENERAL.—The Secretary may cause any and all records, papers, or documents kept by the Secretary or in the Secretary's possession or custody to be photographed or microphotographed or otherwise reproduced upon film, in a manner that shall comply with the minimum standards of quality approved for permanent photographic records by the National Institute of Standards and Technology.

(2) DEEMED AS ORIGINALS.—Such photographs, microphotographs, or photographic films or copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) PRESERVATION.—Such photographs, microphotographs, or reproduction shall be preserved in such manner as the Secretary shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Secretary shall direct.

SEC. 324. SAFE HARBOR.

(a) VOLUNTARY RATINGS.—Upon request from the Association, the Secretary shall contract with two nationally recognized statistical rating organizations—

(1) to assess the likelihood that the Association might not be able to meet its future obligations from its own resources and to express that likelihood as a traditional credit rating; and

(2) to review the rating of the Association for one year from the effective date of the rating.

(b) QUALIFICATION FOR SAFE HARBOR.—

(1) DETERMINATION BY SECRETARY.—If, after receiving a rating from each statistical rating organization described in subsection (a), the Secretary determines that the Association merits the highest investment grade rating awarded by that organization, the Association shall be deemed, effective for one year following the date of the Secretary's determination, to meet the minimum risk-based capital levels for all relevant capital measures for purposes of section 321.

(2) WRITTEN FINDING REQUIRED.—If—

(A) each statistical rating organization described in subsection (a) assigns the Association the highest investment grade rating awarded by that organization, and

(B) the Secretary fails to make the determination described in paragraph (A),

the Secretary shall make a written finding detailing the reasons for the Secretary's failure to make such determination.

(c) EARLY TERMINATION OF SAFE HARBOR.—Subsection (b) shall cease to apply at such time as any such statistical rating organization described in subsection (a) notifies the Secretary, and the Secretary determines, that the Association no longer merits the highest investment grade rating awarded by that organization. The Secretary shall promptly notify the Association that the Secretary has received the notice described in this subsection.

(d) ASSESSMENT FOR RATINGS.—The Secretary shall impose and collect an assessment on the Association, if it requests ratings under subsection (a), to cover the full cost to the Federal government of obtaining the ratings.

(e) DISCRETIONARY RATINGS.—Nothing in this section shall prevent the Secretary from contracting with any nationally recognized statistical rating organization to rate the Association at any time and for any purpose that the Secretary deems appropriate.

(f) DEFINITION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—For purposes of this section, the term "nationally recognized statistical rating organization" means any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rates for broker-dealers.

Subtitle C—General Enforcement Powers

SEC. 331. CEASE-AND-DESIST PROCEEDINGS.

(a) GROUNDS FOR ISSUANCE.—The Secretary may issue and serve upon the Association or any director or executive officer thereof a notice of charges if, in the opinion of the Secretary, the Association or any director or executive officer of the Association—

(1) is engaging or has engaged, or the Secretary has reasonable cause to believe that the Association, director or executive officer is about to engage, in an unsafe or unsound practice in conducting the business of the Association; or

(2) is violating or has violated, or the Secretary has reasonable cause to believe that the Association or the director or officer is about to violate—

(A) a law, rule, or regulation;

(B) any condition imposed in writing by the Secretary in connection with the granting of any application or other request by the Association; or

(C) any written agreement entered into with the Secretary.

(b) PROCEDURE.—

(1) NOTICE OF CHARGES.—Any notice of charges shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the Association, director, or executive officer.

(2) DATE OF HEARING.—Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Secretary at the request of any party served.

(3) FAILURE TO APPEAR CONSTITUTES CONSENT.-Unless the party or parties so served appear at the hearing personally or by a duly authorized representative, the party or parties shall be deemed to have consented to the issuance of the cease-and-desist order.

(4) ISSUANCE OF ORDER.—In the event of such consent, or if, upon the record made at any such hearing, the Secretary finds that any violation of unsafe or unsound practice specified in the notice of charges has been established, the Secretary may issue and serve upon the Association, director, or executive officer an order requiring the Association, director, or executive officer to cease and desist from any such violation or practice and to take affirmative action to correct the condition resulting from any such violation or practice.

(c) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority under this section and section 332 to issue an order which requires the Association, or any director or executive officer thereof, to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require the Association, director, or executive officer—

(1) to make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) The Association, director, or executive officer was unjustly enriched in connection with such violation or practice; or

(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Secretary;

(2) to restrict the growth of the Association;

(3) to dispose of any asset involved;

(4) to rescind agreements or contracts;

(5) to employ qualified officers or employees (who may be subject to approval by the Secretary at the direction of the Secretary); and

(6) to take such other action as the Secretary determines appropriate.

(d) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this section or section 332 includes the authority to place limitations on the activities or functions of the Association, or any director or executive officer thereof.

(e) EFFECTIVE DATE.—A cease-and-desist order shall become effective at the expiration of 30 days after the service of such order

upon the Association, director, or executive officer (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Secretary or a court of competent jurisdiction.

SEC. 332. TEMPORARY CEASE-AND-DESIST ORDERS.

(a) GROUNDS FOR ISSUANCE; SCOPE.—Whenever the Secretary determines that any violation, threatened violation, or unsafe or unsound practice specified in the notice of charges served upon the Association, director, or executive officer pursuant to subsection (a) of section 331, or the continuation thereof, is likely—

(1) to cause insolvency or significant dissipation of assets or earnings of the Association, or

(2) to weaken the condition of the Association prior to the completion of the proceedings conducted pursuant to subsection (b) of section 331,

The Secretary may issue a temporary order requiring the Association, or any director or executive officer thereof to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, or condition pending completion of such proceedings. Such order may include any requirement authorized under subsection (c) or section 331.

(b) EFFECTIVE DATE.—An order issued pursuant to subsection (a) shall become effective upon service upon the Association, director, or executive officer and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (d), shall remain effective and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Secretary dismisses the charges specified in such notice or until superseded by a cease-and-desist order issued pursuant to section 331.

(c) INCOMPLETE OR INACCURATE RECORDS.—

(1) TEMPORARY ORDER.—If a notice of charges served under subsection (a) of section 331 specifies that the Association's books and records are so incomplete or inaccurate that the Secretary is unable, through the normal supervisory process, to determine the financial condition of the Association or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of the Association, the Secretary may issue a temporary order requiring—

(A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(B) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 331.

(2) EFFECTIVE PERIOD.—Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless set aside, limited, or suspended by a court in proceedings under subsection (d), shall remain in effect and enforceable until the earlier of—

(i) the completion of the proceeding initiated under section 331 in connection with the notice of charges; or

(ii) the date the Secretary determines, by examination or otherwise, that the Association's books and records are accurate and reflect the financial condition of the Association.

(d) JUDICIAL REVIEW.—Within 10 days after the Association, director, or executive officer has been served with a temporary cease-and-desist order pursuant to this section, the Association, or any director or executive officer thereof, may apply to the United States District Court for the District of Columbia, which court shall have jurisdiction to issue an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the Association, director, or executive officer under subsection (a) of section 331.

(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Secretary may, with the prior consent of the Attorney General and subject to the attorney General's direction and control, apply to the United States District Court for the District of Columbia for an injunction to enforce the order, and, if the court finds any such violation or threatened violation or failure to obey, it shall issue such injunction.

SEC. 333. REMOVAL AND PROHIBITION AUTHORITY.

(a) AUTHORITY TO ISSUE ORDER.—The Secretary may serve upon any director (other than a director appointed and subject to removal by the President) or executive officer of the Association a written notice of the Secretary's intention to remove such director or executive officer from office or to prohibit any further participation by such director or executive officer, in any manner, in the conduct of the affairs of the Association, whenever the Secretary determines that—

(1) such director or executive officer has directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by the Secretary in connection with the grant of any application or other request by the Association; or

(iv) any written agreement between the Association and the Secretary;

(B) engaged or participated in any unsafe or unsound practice in connection with the Association; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of such director's of officer's fiduciary duty;

(2) by reason of the violation, practice, or breach described in any clause of paragraph (1)—

(A) the Association has suffered or will probably suffer financial loss or other damage; or

(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such director or executive officer; or

(B) demonstrates willful or continuing disregard by such director or executive officer for the safety or soundness of the Association.

(b) SUSPENSION ORDER.—

(1) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Secretary serves written notice under subsection (a) to any director or executive officer of the Association, the Secretary may suspend the director or executive officer from office or prohibit the director or executive officer from further participation in any manner in the conduct of the affairs of the Association, if the Secretary—

(A) determines that such action is necessary for the protection of the Association; and

(B) serves upon such director or officer written notice of the suspension order.

(2) EFFECTIVE PERIOD.—Any suspension order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

(i) the date the Secretary dismisses the charges with respect to such director or executive officer; or

(ii) the effective date of an order issued by the Secretary to the director or executive officer under subsection (a).

(3) COPY OF ORDER.—If the Secretary issues a suspension order under subsection (b) to any director or executive officer of the Association, the Secretary shall serve a copy of such order on the Association at the time such order is issued.

(c) PROCEDURE.—

(1) NOTICE.—A notice of intention to remove a director or executive officer of the Association from office or to prohibit such director or executive officer from participating in the conduct of the affairs of the Association shall contain a statement of the facts constituting grounds therefore and shall fix a time and place at which a hearing will be held thereon.

(2) DATE OF HEARING.—Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Secretary at the request of such party and for good cause shown, or the Attorney General of the United States.

(3) FAILURE TO APPEAR DEEMED CONSENT.—Unless such party appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order or such removal or prohibition.

(4) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the Secretary finds that any of the grounds specified in such notice have been established, the Secretary may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the Association, as the Secretary may deem appropriate.

(d) EFFECTIVE DATE.—Any such order shall become effective at the expiration of 30 days after service upon the Association and the director or executive officer (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Secretary or a court of competent jurisdiction.

(e) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

(1) participate in any manner in the conduct of the affairs of any institution or agency specified in subsection (f)(1);

(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in paragraph (1);

(3) violate any voting agreement previously approved by the Secretary; or

(4) vote for a director, or serve or act as a director or executive officer of the Association.

(f) INDUSTRYWIDE PROHIBITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), any director or executive officer who, pursuant to an order issued under this section or section 334, has been removed or suspended from office in the Association or prohibited from participating in the conduct of the affairs of the Association may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(A) a guaranty agency as defined in section 435(j) of the Higher Education Act;

(B) any insured depository institution as defined in section 2(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(C) any depository institution or institution treated as an insured bank under section 8 (b)(3) or (b)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (b)(3), (b)(4)), or as a savings association under subsection (b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8));

(D) any insured credit union as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752);

(E) any institution chartered under the Farm Credit Act of 1971;

(F) the Federal Housing Finance Board and any Federal home loan bank;

(G) the Federal National Mortgage Association;

(H) The Federal Home Loan Mortgage Corporation;

(I) any appropriate Federal Depository institutions regulatory agency; and

(J) the appropriate Trust Corporation.

(2) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any director or executive officer or prohibits such director or executive officer from participating in the conduct of the affairs of the Association, such party receives the written consent of—

(A) the Secretary, and

(B) the appropriate Federal financial institutions regulatory agency of the institution described in paragraph (1) in which such director or executive officer proposes to hold office or in the conduct of whose affairs the director or executive officer proposes to participate,

paragraph (1) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Secretary and publicly disclose such consent.

(3) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by a director or executive officer subject to an order described in paragraph (1) shall be treated as a violation of the order.

(4) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this subsection, the term "appropriate Federal financial institutions regulatory agency" means—

(A) the Secretary of Education, in the case of a guaranty agency as defined in section 435(j) of the Higher Education Act;

(B) the Office of Government-Sponsored Enterprise Financial Oversight, in the case of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(C) the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), in the case of an insured depository institution;

(D) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971;

(E) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));

(F) the Secretary, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

(G) the Oversight Board, in the case of the Resolution Trust Corporation.

(5) CONSULTATION BETWEEN AGENCIES.—The agencies described in paragraph (2) shall consult with each other before providing any written consent authorized by paragraph (2).

(g) STAY OF SUSPENSION OR PROHIBITION.—Within ten days after any director or executive officer of the Association has been suspended from office or prohibited from participation in the conduct of the affairs of the Association under subsection (b), the director or executive officer may apply to the United States District Court for the District of Columbia which court shall have jurisdiction to a stay of such suspension or prohibition pending completion of the administrative proceedings pursuant to the notice served upon such director or executive officer under subsection (a).

(h) DIRECTORS APPOINTED BY THE PRESIDENT.—The Secretary may notify the President of any director of the Association on whom the Secretary would have served a notice of intention to remove the director or to prohibit the director from participating in the conduct of the affairs of the enterprise under subsection (a) but for the fact that that director was appointed and subject to removal by the President. The Secretary shall include in such notice the grounds for issuance of the notice of intention.

SEC. 334. SUSPENSION OR REMOVAL OF DIRECTOR OR EXECUTIVE OFFICER CHARGED WITH FELONY.

(a) SUSPENSION.—Whenever any director or executive officer is charged in any information, indictment, or complaint with the commission of, or participation in, a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Secretary may, if continued service or participation by such director or executive officer may threaten to impair public confidence in the Association, by written notice served upon such director or executive officer, suspend such director or executive officer from office or prohibit such director or executive officer from further participation in any manner in the conduct of the affairs of the Association. A copy of such notice shall also be served upon the Association.

(b) EFFECTIVE PERIOD.—Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Secretary.

(c) REMOVAL.—In the event a conviction or an agreement to enter a pre-trial diversion or other similar program is entered against such director or executive officer, and at such time as such judgment is not subject to further appellate review, the Secretary may, if continued service or participation by such director or executive officer may threaten to impair public confidence in the Association, issue and serve upon such director or executive officer an order removing him or her from office or prohibiting such director or executive officer from further participation in any manner in the conduct of the affairs of the Association except with the consent of the Secretary. A copy of such order shall also be served upon the Association, whereupon such director or executive officer shall cease to be a director or executive officer of the Association.

(d) DISCRETIONARY REMOVAL NOT PRECLUDED.—A finding of not guilty or other disposition of the charge shall not preclude the Secretary from thereafter instituting proceedings to remove such director or executive officer from office or to prohibit further participation in Association affairs pursuant to subsection (a) or (b) of section 333.

(e) EFFECTIVE DATE.—Any notice of suspension or order of removal issued under this section shall remain effective and outstanding until the completion of any hearing or appeal authorized under subsection (g) unless terminated by the Secretary.

(f) VACANCIES ON THE BOARD OF DIRECTORS.—

(1) QUORUM.—If, at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of the Association less than a quorum, all powers and functions vested in, or exercisable by, such board shall vest in and be exercisable by the remaining director of directors, until such time as there shall be a quorum of the board of directors.

(2) ALL DIRECTORS SUSPENDED.—In the event all of the directors of the Association are suspended pursuant to this section, the Secretary shall appoint temporary directors pending the termination of such suspensions, or until such time as the terms of the suspended directors expire and their successors take office.

(g) HEARING.—

(1) REQUEST FOR HEARING.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to subsection (a), the director or executive officer concerned may request in writing an opportunity to appear before the Secretary to show that the continued service to or participation in the conduct of the affairs of the Association by such director or executive officer does not, or is not likely to, threaten to impair public confidence in the Association.

(2) TIME AND PLACE OF HEARING.—Upon receipt of any such request, the Secretary shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such director or executive officer) and place at which such director or executive officer may appear, personally or through a representative, before the Secretary to submit written materials (or, at the discretion of the Secretary, oral testimony) and oral argument.

(3) DECISION OF THE SECRETARY.—Within 60 days of such hearing, the Secretary shall notify such director or executive officer whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the Association will be continued, terminated, or otherwise modified, or whether the order removing such director or executive director from office or prohibiting such director or executive officer from further participation in any manner in the conduct of the affairs of the Association will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Secretary's decision, if adverse to such director or executive officer.

(h) RULEMAKING.—The Secretary is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this section.

SEC. 335. HEARINGS AND JUDICIAL REVIEW.

(a) Any hearing provided for in this subtitle (other than the hearing provided for in section 334)—

(1) shall be held in the District of Columbia unless the party afforded the hearing consents to another place, and

(2) shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code (5 U.S.C. 500 et seq.).

(b)(1) After such hearing, and within 90 days after the Secretary has notified the parties that the case has been submitted to the Secretary for final decision, the Secretary shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subtitle.

(2) Judicial review of any such order shall be exclusively as provided in subsection (c). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subsection (c), and thereafter until the record in the proceeding has been filed as so provided, the Secretary is authorized to modify, terminate, or set aside any such order. Upon such filing of the record, the Secretary may modify, terminate, or set aside any such order with permission of the court.

(c)(1) Any party to any proceeding under subsection (a) may obtain a review of any order served pursuant thereto (other than an order issued with the consent of the Association, director, or executive officer concerned, or an order issued under section 334) by the filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Secretary be modified, terminated, or set aside. A copy of such petition shall be transmitted by the clerk of the court to the Secretary.

(2) Upon receiving a copy of the petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(3) Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Secretary shall (except as provided in the last sentence of subsection (b)(2)) be exclusive to affirm, modify, terminate, or set aside, in whole or in part, the order of the Secretary.

(4) Review of such proceedings shall be governed by chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(d) NO AUTOMATIC STAY.—The commencement of proceedings for judicial review under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Secretary.

SEC. 336. JURISDICTION AND ENFORCEMENT.

(a) APPLICATION FOR ENFORCEMENT.—The Secretary may, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, apply to the United States District Court for the District of Columbia for the enforcement of any effective and outstanding notice or order issued under this subtitle or section 321 of subtitle B, and such court shall have jurisdiction and power to order and require compliance herewith.

(b) LIMITATION OR MODIFICATION.—Except as otherwise provided in this subtitle no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

SEC. 337. CIVIL MONEY PENALTY.

(a) FIRST TIER.—If the Association or a director or executive officer of the Association—

(1) violates any law or regulation,

(2) violates any final order or temporary order issued pursuant to section 331, 332, 333, or 334, or section 321 of subtitle B,

(3) violates any condition imposed in writing by the Secretary in connection with the grant of any application or other request by the Association, or

(4) violates any written agreement between the Association and the Secretary,

the Association, director, or executive officer shall be subject to a civil penalty of not more than $5,000 for each day during which such violation continues.

(b) SECOND TIER.—Notwithstanding subsection (a), if the Association or a director or executive officer of the Association—

(1)(A) commits any violation described in subsection (a),

(B) recklessly engages in an unsafe or unsound practice in conducting the affairs of the Association, or

(C) breaches any fiduciary duty, and

(2) which violation, practice, or breach—

(A) is part of a pattern of misconduct,

(B) causes or is likely to cause more than a minimal loss to the Association, or

(C) results in pecuniary gain or other benefit to such party,

the Association, director, or executive officer shall be subject to a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(c) THIRD TIER.—Notwithstanding subsections (a) and (b), if the Association or a director or executive officer of the Association—

(1) knowingly—

(A) commits any violation described in subsection (a),

(B) engages in any unsafe or unsound practice in conducting the affairs of the Association, or

(C) breaches any fiduciary duty, and

(2) knowingly or recklessly causes a substantial loss to the Association or a substantial pecuniary gain or other benefit to such director or executive officer by reason of such violation, practice, or breach,

the Association, director, or executive officer shall be subject to a civil penalty in an amount not to exceed the applicable maximum amount determined under subsection (d) for each day during which such violation, practice, or breach continues.

(d) MAXIMUM AMOUNTS OF PENALTIES.—The maximum daily amount of any civil penalty which may be assessed pursuant to subsection (c) for any violation, practice, or breach described in such subsection is—

(1) in the case of any director or executive officer, an amount not to exceed $1,000,000; and

(2) in the case of the Association, an amount not to exceed the lesser of—

(A) $1,000,000, or

(B) one percent of the total assets of the Association.

(e) ASSESSMENT.—

(1) WRITTEN NOTICE.—Any penalty imposed under this section may be assessed and collected by the Secretary by written notice.

(2) FINALITY OF ASSESSMENT.—If a hearing is not timely requested pursuant to subsection (h), the assessment shall constitute a final and unappealable order.

(f) AUTHORITY TO MODIFY OR REMIT PENALTY.—

(1) PRIOR TO COLLECTION ACTION.—Prior to initiation of an action pursuant to subsection (i)(1), the Secretary may compromise, modify, or remit any penalty which is or may be assessed in this section.

(2) AFTER INITIATION OF COLLECTION ACTION.—Following the initiation of an action pursuant to subsection (i)(1), the Secretary may compromise, modify, or remit any penalty which is or may be assessed under this section with the prior consent of the Attorney General.

(g) MITIGATING FACTORS.—In determining the amount of any penalty imposed under this section, the Secretary shall take into account the appropriateness of the penalty with respect to—

(1) the size of financial resources and good faith of the Association, director or executive officer charged;

(2) the gravity of the violation;

(3) the history of previous violations; and

(4) such other matters as justice may require.

(h) HEARING.—The Association, director or executive officer against whom any penalty is assessed under this section shall be afforded an agency hearing if the Association, director or executive director submits a request for such hearing within 20 days after the issuance of the notice of assessment. A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to this subsection.

(i) COLLECTION.—

(1) REFERRAL.—If the Association, director or executive officer fails to pay a penalty that has become final, the Secretary shall, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, recover the amount assessed by action in the appropriate United States district court.

(2) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any action brought under paragraph (1), the validity and appropriateness of the penalty shall not be subject to review.

(j) DISBURSEMENT.—All penalties collected under authority of this section shall be deposited into the General Fund of the Treasury.

(k) REGULATIONS.—The Secretary shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

SEC. 338. NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.

The resignation, termination of employment or participation, or separation of a director or executive officer (including a separation caused by the closing of the Association) shall not affect the jurisdiction and authority of the Secretary to issue any notice and proceed under this subtitle against any such director or executive officer, if such notice is served before the end of the six year period beginning on the date such director or executive officer ceased to be associated with the Association.

SEC. 339. NOTICE OF SERVICE.

Any service required or authorized to be made by the Secretary under this subtitle may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Secretary may by regulation or otherwise provide.

SEC. 340. SUBPOENA POWER, ETC.

(a) POWERS.—In the course of or in connection with any administrative proceeding under this subtitle, or in connection with

any examination or investigation under section 324, the Secretary or any designated representative thereof, including any person designated to conduct any hearing under this title, shall have the power—

(1) to administer oaths and affirmations,

(2) to take or cause to be taken depositions,

(3) to issue subpoenas and subpoenas duces tecum, and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Secretary.

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

(b) RULEMAKING AUTHORITY.—The Secretary is authorized to promulgate such rules and regulations as the Secretary determines necessary or appropriate with respect to proceedings, claims, examinations, or investigations.

(c) ENFORCEMENT.—The Secretary, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States District Court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith.

(d) FEES AND EXPENSES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by the Association or a director or executive officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the Association or from its assets.

SEC. 341. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) IN GENERAL.—The Secretary shall publish and make available to the public—

(1) any written agreement or other written statement for which a violation may be enforced by the Secretary, unless the Secretary determines that publication would be contrary to the public interest;

(2) any final order issued with respect to any administrative enforcement proceeding initiated by the Secretary under this subtitle or any other provision of law; and

(3) any modification to or termination of any final order or agreement made public pursuant to this paragraph.

(b) TRANSCRIPTS OF HEARINGS.—A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(c) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Secretary determines in writing that the publication of any final order pursuant to subsection (a) would seriously threaten the safety or soundness of the Association, the Secretary may delay the publication of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Secretary may file any document or part thereof under seal in any administrative enforcement hearing commenced by the Secretary if, as determined by the Secretary in writing, disclosure of the document would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The Secretary shall keep and maintain a record, for not less than six years, of all documents described in subsection (a) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceedings initiated by the Secretary under this subtitle or any other laws.

(f) DISCLOSURES TO CONGRESS.—No provision of this subsection may be construed to authorize the withholding or to prohibit the disclosure of any information to the Congress or any committee or subcommittee thereof.

Subtitle D—Conservatorship

SEC. 351. APPOINTMENT OF CONSERVATOR.

(a) APPOINTMENT.—The Secretary shall have exclusive power and jurisdiction, without notice or prior hearing, to appoint a conservator, which may be the Secretary, to take possession and control of the Association whenever the Secretary determines that—

(1) the Association is not likely to be able to pay its obligations in the normal course of business;

(2) the Association is an unsafe or unsound condition to transact business, including having substantially insufficient capital or otherwise;

(3)(A) the Association has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and

(B) there is no reasonable prospect for the Association's capital to be replenished without Federal assistance;

(4) there is any violation of law, rule, or regulation, or any unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the Association's condition;

(5) there is concealment of books, papers, records, or assets of the Association, or refusal to submit books, papers, records, or affairs of the Association for inspection to any examiner or to any lawful agent of the Secretary;

(6) there is willful or continuing violation of an order enforceable against the Association under section 203; or

(7) the Association is classified within Level III or Level IV by the Secretary pursuant to section 321 of subtitle B.

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—

(A) Not later than 20 days after the initial appointment of a conservator pursuant to this section, the Association may bring an action in the United States District Court for the District of Columbia for an order requiring the Secretary to terminate the appointment of the conservator.

(B) The Secretary's decision to appoint a conservator pursuant to this section shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) STAY.—

(A) IN GENERAL.—The conservator may request that any judicial action or proceeding to which the conservator or the Association is or may become a party be stayed for a period of up to 45 days after the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

(B) SECRETARY OR FEDERAL AGENCY AS CONSERVATOR.—In any case in which the conservator is the Secretary, a Federal agency, or an employee of the Federal Government, the conservator may make a request described in paragraph (a) only with the prior consent of the Attorney General and subject to the Attorney General's direction and control.

(3) ACTIONS AND ORDERS.—

(A) LIMITATION ON REMEDIES.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of a conservator.

(B) ENFORCEMENT OF ORDERS.—The Secretary, with the prior consent of Attorney General and subject to the Attorney General's direction and control, may apply to a court, which shall have jurisdiction to enforce an order of the Secretary relating to—

(i) the conservatorship and the Association in conservatorship; or

(ii) restraining or affecting the exercise of powers or functions of a conservator.

(c) APPOINTMENT BY CONSENT.—The Secretary may appoint a conservator for the Association if the Association, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

(d) POWERS OF CONSERVATOR.—

(1) The Secretary shall have exclusive power and jurisdiction to appoint a conservator for the Association. As conservator, the Secretary shall have all the powers granted under the applicable law, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators under this subtitle and any other provision of law.

(2) Any other person appointed conservator shall be subject to the provisions of this subtitle.

(e) REPLACEMENT OF CONSERVATOR.—The Secretary may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the Association's right under subsection (b) to obtain judicial review of the Secretary's original decision to appoint a conservator.

SEC. 352. EXAMINATIONS.

The Secretary is authorized to examine and supervise the Association in conservatorship as long as the Association continues to operate as a going concern.

SEC. 353. TERMINATION OF CONSERVATORSHIP.

(a) IN GENERAL.—At any time the Secretary becomes satisfied that it may safely be done and that it would be the public interest, the Secretary may terminate the conservatorship and permit the Association to resume the transaction of its business subject to such terms, conditions, and limitations as the Secretary may prescribe.

(b) ENFORCEMENT AS FINAL CEASE-AND-DESIST ORDER.—

(1) Such terms, conditions, and limitations as may be prescribed under subsection (a) shall be enforceable under the provisions of section 336, to the same extent as an order issued pursuant to section 331 which has become final.

(2) The Association may bring an action in the United States District Court for the District of Columbia for an order requiring the Secretary to terminate the order.

(3) An action for judicial review of the terms, conditions, and limitations contained in any order may not be commenced later

than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

SEC. 354. CONSERVATOR; POWERS AND DUTIES.

(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the Association and may operate the Association in its own name unless the Secretary in the order of appointment limits the conservator's authority.

(b) SUBJECT TO RULES OF SECRETARY.—The conservator shall be subject to such rules, regulations, and orders as the Secretary from time to time deems appropriate and, except as otherwise specifically provided in such rules, regulations, or orders in section 354, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to director, officers, or employees of the Association.

(c) PAYMENT OF CREDITORS.—The Secretary may require the conservator to set aside and make available for payment to creditors such amounts as in the opinion of the Secretary may safely be used for that purpose. All creditors who are similarly situated shall be treated in the same manner.

(d) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—The conservator (other than the Secretary) and professional employees (other than Federal government employees) appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Secretary may authorize payment of higher rates (but not in excess of rates prevailing in the private sector), if the Secretary determines that paying such higher rates is necessary in order to recruit and retain competent personnel.

(e) EXPENSES.—All expenses of any such conservatorship shall be paid by the Association and shall be a lien upon the Association which shall have priority over any other lien.

SEC. 355. LIABILITY PROTECTION.

(a) FEDERAL AGENCY AND EMPLOYEES.—In any case which the conservator is a Federal agency or an employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code (28 U.S.C. 2401 et seq., 2671 et seq.), shall apply within respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct, as determined by a court.

(c) INDEMNIFICATION.—The Secretary, with the approval of the Attorney General, shall have authority to indemnify the conservator on such terms as the Secretary deems proper.

SEC. 356. POWERS OF OFFICERS NOT AFFECTED.

Nothing is this subtitle shall be construed to impair any powers of the President, the Secretary, or the Attorney General.

SEC. 357. RULES AND REGULATIONS.

The Secretary may prescribe such rules and regulations as the Secretary may deem necessary to carry out the provisions of this subtitle.

TITLE IV—JURISDICTION OF COURTS IN PROMPT CORRECTIVE ACTION

SEC. 401. JURISDICTION.

(a) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—Chapter 91 of title 28, United States Code, is amended—

(1) by adding after section 1505 the following new section:

"SEC. 1510. JURISDICTION FOR CERTAIN CLAIMS AGAINST APPROPRIATE FEDERAL REGULATORY AGENCIES.

"The United States Claims Court shall have exclusive jurisdiction to render judgment upon any claim for damages against the United States by any person who has petitioned for judicial review of an action of the Director of the Office of Government-Sponsored Enterprises Financial Oversight or the Secretary of the Treasury pursuant, respectively, to sections 131(h) and 321(h) of the Government-Sponsored Enterprises Financial Safety and Soundness Act of 1991, where such action has been, at the conclusion of judicial review proceedings, modified, terminated or set aside by a court of competent jurisdiction. The claim shall be limited to actual damages caused by the action taken by the Director or Secretary that has been modified, terminated or set aside, and shall be filed within 10 days of the final order granting the relief sought in the petition."; and

(2) in the table of sections, by inserting after the item relating to section 1509 the following new item:

"1510. Jurisdiction for certain claims against appropriate Federal regulatory agencies.".

(b) WITHDRAWAL OF JURISDICTION.—Except as provided in section 1510 of title 28, United State Code, no court shall have jurisdiction to hear a claim for damages for agency action under this section.

TITLE V—FARM CREDIT SYSTEM

Subtitle A—Improvements to Farm Credit System Safety and Soundness

SEC. 501. CLARIFICATION OF FUNDING CORPORATION AUTHORITY.

Section 4.9(b) of the Farm Credit Act of 1971 (12 U.S.C. 2160) is amended—

(1) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

"(3) shall have the authority, in connection with its duty to establish conditions of participation pursuant to paragraph (2), to gather information from, and monitor the financial condition and performance of, System banks and their related associations, to establish and impose economic incentives designed to encourage compliance with such standards; and"; and

(2) by inserting after paragraph (4) the following: "The economic incentives permitted pursuant to this section may include differential pricing of joint, consolidated or System-wide obligations to the individual banks by the Corporation, premiums imposed by the Corporation on banks that fail to meet established financial condition and performance standards, or such other economic incentives as may be determined appropriate by the board of directors of the Corporation. On behalf of the banks, the Corporation shall be authorized under paragraph (1) to collect, invest, and otherwise handle the flow of funds resulting from the establishment of any such economic incentives.".

SEC. 502. ACCESS TO ASSOCIATION CAPITAL.

Section 5.61(a)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(a)(2)) is amended by adding at the end the following:

"(C) CONTRIBUTIONS TO CAPITAL.—Whenever assistance has been provided to any System bank under subsections (a)(1) or (a)(2)(A), the Corporation, in its sole discretion, may determine the amount of additional stock in the bank to be subscribed for by the association stockholders and borrowers from the bank in order to provide capital to meet the capital requirements of section 4.3. The determined amount shall be allocated to each association so that the ratio of—

"(i) such association's stock currently owned plus its additional required subscriptions divided by the total stock currently owned by all associations plus the total required subscriptions of all associations, is equal to the ratio of—

"(ii) the average indebtedness of such association to the bank during the immediate past three fiscal years divided by the average of the total indebtedness to the bank of all associations during such three-year period.

"Any stock required to be purchased under this subsection may be retired, provided that any assistance provided by the Corporation is repaid or any obligation to the Corporation under subsections (a)(1) or (a)(2)(A) is extinguished.

"(D) CONTRIBUTIONS TO INSURANCE FUND.—Whenever the Corporation uses funds of the Insurance Fund pursuant to section 5.60(c)(1), the Corporation, in its sole discretion, may determine the amount of funds to be contributed to the Insurance Fund by the association stockholders and borrowers of the bank whose obligations the Corporation repaid. The determined amount shall be allocated to each association so that the ratio of—

"(i) such association's stock currently owned plus its additional contribution to the Fund divided by the total stock currently owned by all associations plus the total additional contributions to the Fund of all associations, is equal to the ratio of—

"(ii) the average indebtedness of such association to the bank during the immediate past three fiscal years divided by the average of the total indebtedness to the bank of all associations during such three-year period.".

SEC. 503. ENHANCED SUPERVISION OVER FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

Section 8.11(a)(1) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-11(a)(1)) is amended to read as follows:

"(1) AUTHORITY.—Notwithstanding any other provision of law, the Farm Credit Administration shall have the authority to—

"(A) provide for the examination of the Corporation and its affiliates; and

"(B) provide for the general supervision of the safe and sound performance of the powers, functions and duties vested in the Corporation and its affiliates by this title through the use of the authorities granted to the Farm Credit Administration under section 5.17(a)(9) and part C of title V.".

Subtitle B—Farm Credit System Insurance Corporation

SEC. 511. BOARD OF DIRECTORS.

Section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a-2) is amended to read as follows:

"SEC 5.53. BOARD OF DIRECTORS.

"The Corporation shall have five members. The three voting members, each of whom shall have a financial background and expertise, shall be appointed by the President. The two non-voting members shall be one member of the board of directors of the Farm Credit Administration other than the Chairman, and the Secretary of Agriculture.".

SEC. 512. RISK-BASED INSURANCE PREMIUMS.

Section 5.55 of the Farm Credit Act of 1971 (12 U.S.C. 2277a-4) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e) respectively; and by inserting after subsection (a) the following new subsection:

"(b) Within one year of enactment of this subsection the Corporation shall develop and publish a risk-based premium structure, permitting differential premiums based on the relative financial condition of banks, to supersede the premium structure contained in subsection (a)(2).".

SEC. 513. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.

Section 5.58(2) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-7(2)) is amended by adding at the end thereof the following:

"The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying such institutions as eligible to issue preferred stock pursuant to title VI.".

Subtitle C—Farm Credit System Consolidation

SEC. 521. CONSOLIDATION OF DISTRICT BANKS.

Section 1.2(b) of the Farm Credit Act of 1971 (12 U.S.C. 2002(b)) is amended to read as follows:

"(b) FARM CREDIT DISTRICTS.—

"(1) Pursuant to the provisions contained in section 302 of the Farm Credit System Financial Safety and Soundness Act of 1991, the farm credit districts in the United States shall be consolidated so as to ensure adequate geographic and crop-based diversity. Such districts, one of which shall include the Commonwealth of Puerto Rico and one of which may, if authorized by the Farm Credit Administration, include the Virgin Islands of the United States, may be designated by number.

"(2) The extension of credit and other services authorized by this Act in the Virgin Islands of the United States shall be undertaken only if determined to be feasible under regulations of the Farm Credit Administration.

"(3) The boundaries of Farm Credit districts may be readjusted from time to time by the Farm Credit Administration, with the concurrence of the boards of the bank in each district involved.

"(4) Two or more districts may be merged as provided in section 5.17(a)(2) of this Act.

"(5) Until the effective date of the consolidation of farm credit districts pursuant to the Farm Credit System Financial Safety and Soundness Act of 1991, there shall be not more than 12 farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico and one of which districts may, if authorized by the Farm Credit Administration, include the Virgin Islands of the United States.".

SEC. 552. TERMS OF CONSOLIDATION.

(a) IN GENERAL.—Notwithstanding the provisions of section 5.17(a)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(2)), the Farm Credit Bank of each farm credit district and the Federal Intermediate Credit Bank of Jackson shall consolidate pursuant to a consolidation plan agreed on by the Boards of Directors of such banks and approved by the Farm Credit Administration or, if such banks fail to agree, a consolidation plan prescribed by the Farm Credit Administration. Such consolidation plan will ensure that each district has adequate geographic and crop-based diversity.

(b) SPECIAL COMMITTEE.—Within 60 days of the date of enactment of this title, a special committee, composed of one member elected from each Farm Credit Bank and the Federal Intermediate Credit Bank of Jackson, shall be established for the purpose of developing a consolidation plan of all such banks.

(c) SUBMISSION TO FCA.—Within 18 months of the date of enactment of this title, the special committee established pursuant to subsection (b) shall submit to the Farm Credit Administration a consolidation plan, together with all information considered necessary by the Farm Credit Administration, for approval.

(d) EXPEDITED REVIEW.—Within 90 days of receipt of the consolidation plan, the Farm Credit Administration shall review such plan and provide the special committee with any changes required to be made to the plan. The special committee shall promptly incorporate all such changes into the plan.

(e) FCA MANDATORY PLAN.—If within 2 years of the date of enactment of this title, the special committee has failed to comply with the requirements contained in either subsection (c) or (d), the Farm Credit Administration shall prescribe a consolidation plan for the Farm Credit Banks of each Farm Credit System district and the Federal Intermediate Credit Bank of Jackson.

(f) CAPITAL STOCK.—Notwithstanding section 1.6 of the Farm Credit Act of 1971 (12 U.S.C. 2014), the number of shares of capital stock issued by the consolidated banks to stockholders and other owners of the institutions involved in the consolidation, and the rights and privileges of such shares (including voting power, redemption rights, preferences on liquidation, and the right to dividends) shall be determined by the consolidation plan approved by the Farm Credit Administration, and shall be consistent with section 4.3A of the Farm Credit Act of 1971 (12 U.S.C. 2154a) and the regulations issued by the Farm Credit Administration.

(g) INITIAL BOARD.—Notwithstanding section 1.4 of the Farm Credit Act of 1971 (12 U.S.C. 2012), and subject to Farm Credit Administration approval, the initial board(s) of the consolidated banks shall include the chairman of each farm credit district bank at the time of the consolidation. Such initial board(s) shall operate for such term as is agreed to by the members of the board(s) and approved by the Farm Credit Administration, except that such period shall not exceed two years. Thereafter, the board(s) shall be elected and serve in accordance with section 1.4 of the Farm Credit Act of 1971 (12 U.S.C. 2012).

(h) TECHNICAL AMENDMENT.—Effective upon completion of the consolidation required by this section, section 1.2(b)(5) of the Farm Credit Act of 1971 is repealed.

Subtitle C—Repayment of Financial Assistance Corporation Debt Obligations

SEC. 531. REPAYMENT OF TREASURY INTEREST PAYMENTS.

(a) Section 6.26 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-6) is amended—

(1) by amending subsection (a) to read as follows:

"(a) PREPAYMENT OF PRINCIPAL AND INTEREST PAYMENT.—Any System institution required to make payments under this section may pay any amount toward satisfaction prior to the due date of such obligation into the Farm Credit Assistance Fund. Such payments and any interest thereon shall be held and used by the Financial Assistance Corporation only for the purpose of satisfying the obligations of the payor under this section.";

(2) in subsection (C)(5)(A), by striking out", on a fair and equitable basis,";

(3) in subsection (c)(5)(B), by striking "when the Farm Credit Administration," and all that follows through "have been fully repaid." and adding the following: "on the maturity of each obligation issued under subsection (a). Each System institution shall pay a portion of the total amount of such interest charges equal to—

"(i) the average performing loan volume of the institution for the preceding 15 years, divided by

"(ii) the average performing loan volume of all of the System institutions for the same period.";

(4) by striking subsection (c)(5)(C);

(5) in subsection (d)(1)(C), by striking "under section 6.7(a)" and inserting instead "or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively,";

(6) in subsection (d)(3)(A)(i), by inserting "or upon maturity of an obligation for repayment of interest to the Secretary of the Treasury," after "subsection (a) of this section,"; and

(7) in the second sentence of subsection (d)(3)(B)(iii), by striking "such stock" and inserting instead "the amount of such stock needed to meet the capital requirements established under section 4.3 of this Act after January 1, 1993 through the maturity of the obligations of the Financial Assistance Corporation financing the purchase of such stock.".

(b) Section 6.28(b) of the Farm Credit Act of 1971 (12 U.S.C. 2278b-8) is amended to read as follows:

"(b) REPAYMENT OF INTEREST PAID BY SECRETARY OF TREASURY.—Any amounts paid into the Assistance Fund by the Secretary of the Treasury pursuant to subsection (a) of this section shall be repaid by System institutions in accordance with section 6.26(c)(5) of this Act.".

SEC. 532. CAPITAL PRESERVATION ASSISTANCE.

Section 6.9 of the Farm Credit Act of 1971 (12 U.S.C. 2278a-9) is amended by striking subsection (e)(3)(D).

Subtitle D—Farm Credit System Bank and Institution Management

SEC. 541. BOARDS OF DIRECTORS.

Sections 1.4, 2.1, and 2.11 of the Farm Credit Act of 1971 (12 U.S.C. 2012, 2072 and 2092) are each amended by striking "one member" wherever it appears and inserting instead "one-third of the members".

SECTION-BY-SECTION ANALYSIS OF GOVERNMENT-SPONSORED ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1991

TITLE I—IMPROVEMENT OF SUPERVISION AND REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE ASSOCIATION

The primary purpose of Title I of the Government-Sponsored Enterprises Financial Safety and Soundness Act of 1991 (the "Act") is to establish a system of regulation of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") that embodies the following principles developed in the 1991 Report of the Secretary of the Treasury on Government-Sponsored Enterprises—

(1) financial safety and soundness should be given primacy over other public policy considerations in the regulation of FNMA and FHLMC;

(2) the regulator should have sufficient stature to maintain independence from FNMA, FHLMC and special interest groups;

(3) private market risk assessment mechanisms can help the regulator assess the fi-

nancial safety and soundness of FNMA and FHLMC; and

(4) the basic statutory authorities for financial safety and soundness regulation should be consistent across all Government-sponsored enterprises; therefore, the regulator should have the authority, among others, to establish capital standards; require financial disclosure; if necessary, prescribe adequate standards for books and records and other internal controls; conduct examinations; and enforce compliance with the standards and rules so established.

Title I creates a new separate, arms-length bureau within the Department of Housing and Urban Development ("HUD") that will be responsible for assuring the financial safety and soundness of FNMA and FHLMC. The new bureau, to be known as the Office of Government-Sponsored Enterprise Financial Oversight (the "Office"), will become effective January 1, 1992.

Section 102 is a definitional section. The term "Director" is defined to mean the Director of the Office. The term "enterprise" means the FNMA and FHLMC and any affiliates they may be authorized to establish. The term "Secretary" means the Secretary of HUD. The terms "capital", "capital distribution", "compensation", "executive officer", and "new program" are also defined.

Section 112 provides for the appointment of the Director by the President with the advice and consent of the Senate. The Director serves for a term of five years. Vacancies are to be filled in the same manner as appointments. The Director is authorized to designate who shall act as Director if the Director dies, resigns, or is sick or absent. If the Director does not make such a designation, the Secretary of HUD shall make the designation.

Section 113 amends section 5314 of Title 5 of the United States Code to provide that the Director shall be compensated at Level III of the Executive Service.

Section 114 provides that certain actions of the Director shall be within the exclusive authority of the Director. These actions include case-specific determinations and actions regarding the denial for reasons of safety and soundness of any request for approval of the Director under applicable law or regulations, examinations, decisions to appoint a conservator, and any enforcement action. The Director may nevertheless consult with the Secretary on any matter, including those described above. All other authority vested in the Director, including the authority to adopt rules and regulations, shall be exercised by the Director subject to the review and approval of the Secretary. The section also expressly provides that the Director may delegate any of the Director's authority to any employee, representative or agent of the Office.

Section 115 authorizes the Director to appoint all employees of the Office and fix their compensation.

Section 116 provides the Director with broad authority to issue such regulations and orders as are necessary or appropriate to carry out any law within the Director's jurisdiction. Any regulations promulgated by the Director are to be exempt from the provisions of section 3535(o) of title 42 of the United States Code, which requires the Secretary of HUD to notify certain Congressional committees prior to publication of any proposed or final rules.

Section 117 contains certain conforming amendments to the Federal National Mortgage Association Charter Act (the "Charter Act") to reflect the new grant of authority to the Director to supervise the safety and soundness of FNMA and to coordinate such authority with certain programmatic authority retained by the Secretary. Section 117 amends section 303 of the Charter Act to delete the requirement that the Secretary approve any requirement imposed by FNMA on mortgage sellers to make capital contributions to FNMA. Since the purpose of such a requirement is to accumulate funds for FNMA's capital surplus, this requirement relates to financial safety and soundness and therefore should be taken into account by the Director in establishing and enforcing capital standards for FNMA.

Section 304(b) of the Charter Act is amended by deleting language that limits FNMA outstanding unsecured debt to 15 times FNMA's capital, capital surplus, general surplus, reserves and undistributed earnings unless the Secretary of HUD sets a higher ratio. A sentence limiting unsecured debt to an amount equal to the amount of unencumbered mortgages and certain other liquid investments is also deleted. Both of these provisions impose capital restraints on FNMA that should no longer be necessary given the authority granted to the Director to establish relevant capital measures for FNMA.

Section 304(b) of the Charter Act is further amended to require FNMA also to obtain the approval of the Director whenever it must under current law obtain the approval of the Secretary of the Treasury in connection with the issuance of obligations. Since the issuance of obligations, especially new instruments with unknown risk characteristics, can have a significant effect on the safety and soundness of FNMA, the Director needs to be able to disapprove the issuance of particular obligations to carry out the Director's functions. It is not, however, intended that the Director micromanage FNMA's funding operations; therefore, this amendment provides that any obligation issued or being issued by FNMA on the date of enactment of this Act, or any obligation of a substantially identical type, is deemed approved by the Director. This provision does not override the Director's authority under section 131 as set forth below to limit liabilities of FNMA. These amendments are not intended to affect in any way the existing authority of the Secretary of the Treasury.

Section 309(h) of the Charter Act is amended to reflect the responsibility given to the Director for assuring the financial safety and soundness of FNMA. As amended, the subsection will provide that the Secretary of HUD shall have regulatory and rulemaking authority over FNMA, except for the authority to ensure safety and soundness that is vested in the Director as described above.

Section 311 of the Charter Act is amended to delete a requirement that the Secretary of HUD approve all issuances of stock and convertible debt by FNMA.

All of these amendments except the amendment deleting the statutory capital ratio shall become effective on January 1, 1992, the date the Office is established. The amendment deleting the statutory capital ratio becomes effective three years after the date of enactment, which is the effective date for the minimum risk-based capital levels described below.

Any rules and regulations adopted by the Secretary pursuant to provisions of the Charter Act will be effective and enforceable by the Secretary to the extent they are not inconsistent with the duties and authorities of the Director.

Section 118 contains similar conforming amendments to the Federal Home Loan Mortgage Corporation Act (the "FHLMC Act"). Section 303(b) of the FHLMC Act is amended to reflect the responsibility given to the Director for assuring the financial safety and soundness of FHLMC. As amended, the subsection will provide that the Secretary of HUD shall have regulatory and rulemaking authority over FHLMC, except for the authority to ensure safety and soundness that is vested in the Director as described above.

Section 303(b) of the FHLMC Act is also amended by eliminating a provision authorizing the Secretary of HUD to limit the amount of dividends paid by FHLMC. This authority is included in the more detailed supervisory and enforcement powers granted to the Director as described below. A statutory capital rule similar to the one described above for FNMA is also deleted as unnecessary in view of the explicit authority granted the Director to establish relevant capital measures for FHLMC.

Section 118(b) amends section 306(j) of the FHLMC Act to give the Director concurrent approval authority with the Secretary of the Treasury over the issuance of notes, debentures, and substantially identical types of unsecured obligations. This amendment is intended to have the same effect as the parallel amendment to section 304(b) of the Charter Act in section 117(b)(3)–(4).

The various amendments to the FHLMC Act have the same effective dates as the parallel amendments to the Charter Act, as described above. Any rules and regulations adopted by the Secretary pursuant to provisions of the FHLMC Act will be effective and enforceable by the Secretary to the extent they are not inconsistent with the duties and authorities of the Director.

Section 119 requires the Director to make an annual report to Congress setting out steps taken to implement this Act, the safety and soundness of each enterprise, and any recommended amendments to any law affecting the safety and soundness of the enterprises. These reports will be in addition to reports of the Secretary required under current law. It is intended that the Secretary will report separately on programmatic matters not included in the report of the Director.

Section 120 authorizes the Secretary to assess the enterprises an amount equal to the costs associated with carrying out the Director's responsibilities and the Secretary's regulatory responsibilities with respect to the enterprises. These funds are to be deposited into a new separate fund of the Treasury from which they will be immediately available to carryout the responsibilities of the Secretary and the Director without regard to fiscal year limitations.

Section 131 sets out the new authority granted to the Director to ensure the capital adequacy of the enterprises and to take prompt corrective action in the event an enterprise falls below a relevant capital measure. Under section 131(a), the Director is required to establish relevant capital measures for the enterprises and to establish minimum risk-based capital levels for each measure that meet certain criteria. The minimum risk-based capital levels must exceed the leverage limit set forth in section 131(a)(2) and they must equal, in the Director's opinion, the sum of—

(1) an amount of capital sufficient, when considered in conjunction with guarantee fees paid to the enterprise, to enable the enterprise to maintain positive capital to cover interest rate risk and credit risk, independently, under stressful economic circumstances determined by the Director;

(2) an amount of capital sufficient to protect aganist management risk, operations risk, and business risk; and

(3) an amount of capital sufficient to provide capital coverage at the margin for purposed new programs or lines of business whose risk characteristics are uncertain.

In assessing the impact of the stressful economic environments determined by the Director, the Director will use the most recent generally accepted analytical methodologies to measure the interest rate risk and credit risk presented by the enterprise's method of conducting business.

Section 131(a)(2) sets forth a leverage limit which is equal to the sum of—

(1) 2.50 percent of total on-balance sheet assets,

(2) 0.45 percent of the total face value of outstanding mortgage-backed securities issued or guaranteed by the enterprise, and

(3) such other percentage of other off-balance sheet obligations as the Director shall establish by regulation.

The Director is given the authority to establish by regulation a leverage limit above the specified level.

Finally, section 131(a)(3) provides for a critical capital level that is intended, as a general matter, permit resolution of an enterprise's problems from its own resources. This level shall be the sum of 1.25 percent of total on-balance sheet assets, .25 percent of outstanding mortgage-backed securities, and such other percentage of other off-balance sheet obligations as the Director shall establish by regulation.

"On-balance sheet assets" and "off-balance sheet obligations" are to be determined in accordance with generally accepted accounting principles.

Based on the three capital levels just described, section 131 establishes four different levels into which an enterprise may fall and sets forth specific actions that may be taken by the Director depending upon which level an enterprise is in. The Director is required to promulgate the regulations establishing the minimum risk-based capital levels within one year from the date of enactment. Beginning three years from the date of enactment, the Director may take any action authorized under section 131 (as described in greater detail below) for failure to meet the minimum risk-based capital level. The Director may take any action authorized under section 131 based upon failure to meet the statutory leverage limit beginning one year after the date of enactment. The Director may take any action authorized under section 131 based upon failure to meet the critical capital level beginning January 1, 1992.

Level I is defined to include an enterprise that maintains capital that is below the minimum risk-based capital level for any relevant capital measure and is not within Levels II, III, or IV as described below.

Level II is defined to include an enterprise that maintains capital that is significantly below the minimum risk-based capital level for any relevant capital measure but that is at or exceeds the leverage limit, or an enterprise that is otherwise classified within Level II under other provisions of section 131.

Level III is defined to include an enterprise that maintains capital that is below the leverage limit but that is at or exceeds the critical capital level, or an enterprise that is otherwise classified within Level III under other provisions of section 131.

Level IV is defined to include an enterprise that maintains capital below the critical capital level.

Section 131(a)(7) provides that the Director may reclassify any enterprise in Level I or Level II to Level III if the Director determines that the enterprise is in an unsafe and unsound condition or is engaging in an unsafe and unsound practice.

Section 131(b) provides that the Director shall promulgate regulations and take such other actions as are necessary to implement the provisions of section 131. It further provides that the Director is authorized to issue such orders and take such other actions as are necessary or appropriate to carry out the purposes of section 131. Section 131(b) also provides that the Director shall by regulation specify the applicable capital levels for each relevant capital measure to delineate Levels I through IV as described above.

Finally, section 131(b) provides that an enterprise that falls below the minimum risk-based capital levels may engage in an activity otherwise subject to programmatic approval of the Secretary only if it obtains in addition the approval of the Director as specified in section 131. This amendment combined with section 114 as described above gives the Director the exclusive authority to deny permission to engage in such investments for reasons of financial safety and soundness. The Secretary of HUD retains the authority to approve or deny such investments for programmatic reasons.

Section 131(c) sets forth the mandatory supervisory actions that may be taken with respect to an enterprise within Level I. The mandatory actions include restrictions on expansion and capital distributions that would cause the enterprise to fall below Level I. The Director shall also refuse any expansion if the Director determines that the enterprise is engaging in an unsafe and unsound practice or is in an unsafe and unsound condition.

Section 131(d) sets forth the mandatory and discretionary supervisory actions that may be taken with respect to an enterprise within Level II. The mandatory actions include a requirement to submit and implement an acceptable capital plan that will restore the capital of the enterprise to a level sufficient to meet the minimum risk-based capital levels established by the Director, restrictions on capital distributions, restrictions on expansion that are otherwise subject to approval by the Director, and reclassification to Level III for failure to submit an acceptable capital plan or to implement it in good faith to the satisfaction of the Director.

The discretionary supervisory actions include the authority to limit any increase in, or order the reduction of, any liabilities; to restrict or require contraction of the enterprise's assets; to restrict capital distributions; to restrict activities; and to limit executive compensation.

Section 131(e) includes the mandatory and discretionary supervisory actions applicable to enterprises within Level III. The mandatory actions include a requirement to submit and implement an acceptable capital plan if one has not already been filed; a prohibition on capital distributions; a prohibition on expansion; a limitation on asset growth; and a limitation on compensation. The discretionary actions include the ability to impose further limits on executive compensation as well as authority to dismiss officers and directors and the authority to appoint a conservator for the enterprise.

Section 131(f) provides that the Director shall, within 30 days after determining that an enterprise is within Level IV, appoint a conservator for the enterprise. The conservator shall have the authority to take any mandatory or discretionary supervisory actions available for enterprises in Levels II or III and shall also have the powers of a conservator as set forth in section 164.

The Director is given the authority to modify, defer, or remove any mandatory supervisory action applicable to any enterprise if the Director determines it to be in the public interest.

Section 131(g) sets forth the requirements of the capital restoration plan that is required as described above. The Director is generally required to act on a capital plan within 30 days after submission, but the Director is authorized to extend this time period.

Section 131(h) provides that any person aggrieved by an action of the Director under this section may obtain judicial review in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the circuit in which the concerned enterprise maintains its home office. An aggrieved person includes the enterprise that is the subject of a mandatory or discretionary supervisory action under Levels I, II, or III; a person who has been dismissed as provided in this section; or a person whose compensation has been limited as provided in this section.

An action of the Director may be modified, terminated or set aside only if the reviewing court finds, on the record on which the Director acted, that the Director's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. No court shall have jurisdiction to enjoin or otherwise delay agency action pending judicial review. However, petitions under this section will be given expedited review.

Section 132 establishes a safe harbor for enterprises that receive the highest investment grade from two nationally-recognized statistical rating organizations ("NRSRO"). If the Director determines, after receiving ratings from two NRSROs, that an enterprise merits the highest investment grade rating, the enterprise shall be deemed to meet the minimum risk-based capital levels described above for one year following the effective date of the Director's determination. If the Director fails to make such a determination, the Director shall make a written finding setting forth the reasons. The safe harbor will be terminated prior to the end of the one-year period if either NRSRO notifies the Director, and the Director determines, that an enterprise no longer merits the highest investment grade. The cost of the ratings will be covered by an assessment on the enterprise seeking to qualify for the safe harbor. The Director may seek a rating of an enterprise from an NRSRO at any time to assist in carrying out the Director's responsibilities.

Section 133 imposes various reporting requirements on each enterprise that are similar to the reporting requirements imposed on banks under the Federal Deposit Insurance Act ("FDI Act"). Section 133 requires each enterprise to make annual reports of condition to the Director and authorizes the Director to call for such additional other reports as the Director determines to be necessary. The reports of condition shall be certified by an officer of the enterprise as true and correct to the best of his or her knowledge and belief and shall also be attested by at least three directors of the enterprise.

Section 133(c) imposes three tiers of penalties for failure to make reports as required under this section. Section 133(d) also requires each enterprise to make such reports

to the Director on the payment of capital distributions as the Director deems necessary.

Section 134 authorizes the Director to appoint examiners who shall have the power to examine either enterprise whenever the Secretary determines that an examination is necessary to determine the condition of the enterprise.

Sections 141 through 144 grant the Director authority to issue cease-and-desist orders or to remove or suspend officers or directors of an enterprise that parallels the authority of the appropriate Federal banking agencies under section 8 of the FDI Act. Section 147 contains authority to impose civil money penalties under three different tiers. These penalties, like the penalties in the FDI Act on which they are modeled, are intended to be compensatory of costs and damages to the Government that are not readily susceptible to measurement. Nonetheless, since the imposition of these civil penalties may potentially preclude a subsequent criminal prosecution based on the same facts under the Double Jeopardy clause of the U.S. Constitution, *see United States* v. *Halper*, _____ U.S. _____, 109 S. Ct. 1892 (1989), the Congress intends the Director and the Attorney General to work together to develop procedures to avoid undesired preclusion of subsequent criminal prosecutions.

Sections 161 through 167 contain conservatorship provisions that parallel provisions of the Bank Conservation Act (12 U.S.C. 200 *et seq.*). Section 161 provides the Director with the authority to appoint a conservator to take possession and control of an enterprise whenever one or more of several circumstances exist, including classification in Level III or Level IV as described above. Section 161 also provides for judicial review of the appointment of a conservator. Section 162 authorizes examinations of enterprises in conservatorship. Section 163 provides for termination of a conservatorship. Section 164 sets forth the powers and duties of a conservator. Section 165 provides limits on the liability of a conservator and permits the Director to indemnify a conservator.

TITLE II—PRIMACY OF FINANCIAL SAFETY AND SOUNDNESS FOR THE FEDERAL HOUSING FINANCE BOARD

Title II contains an amendment to section 2A of the Federal Home Loan Bank Act which makes financial safety and soundness of the Federal Home Loan Banks ("FHLBks") the primary duty of the Federal Housing Finance Board ("FHFB"). The other duties of FHFB, which include ensuring that the FHLBks carry out their housing finance missions, although important, are to be secondary to ensuring that the FHLBks operate in a financially safe and sound manner.

TITLE III—IMPROVEMENT OF SUPERVISION AND REGULATION OF STUDENT LOAN MARKETING ASSOCIATION

The purpose of Title III is to establish a system of regulation of the Student Loan Marketing Association ("SLMA") that embodies the following principles, which track the principles embodied in Title I with respect to the FNMA and FHLMC—

(1) financial safety and soundness should be given primacy over other public policy considerations in the regulation of SLMA;

(2) the regulator should have sufficient stature to maintain independence from SLMA or special interest groups;

(3) private market risk assessment mechanisms can help the regulator assess the financial safety and soundness of SLMA; and

(4) the basic statutory authorities for financial safety and soundness regulation should be consistent across all Government-sponsored enterprises; therefore, the regulator should have the authority, among others, to establish capital standards; require financial disclosure; if necessary, prescribe adequate standards for books and records and other internal controls; conduct examinations; and enforce compliance with the standards and rules so established.

Section 302 is a definitional section that defines the term "Association" to mean the Student Loan Marketing Association and the term "Secretary" to mean the Secretary of Treasury. The terms "capital", "capital distribution", "compensation", "executive officer", and "new program" are also defined.

Section 311 requires the Secretary to make an annual report to Congress setting out steps taken to implement this Act, the safety and soundness of SLMA, and any recommended amendments to any law affecting the safety and soundness of SLMA.

Section 312 authorizes the Secretary to assess SLMA for the costs associated with carrying out the Secretary's responsibilities. These funds are to be deposited into a new separate fund of the Treasury from which they will be immediately available to carry out the responsibilities of the Secretary without regard to fiscal year limitation.

Section 313 contains various amendments to section 439 of the Higher Education Act of 1965 to reflect the new grant of authority to the Secretary to supervise the safety and soundness of SLMA. References to the Secretary in subsections (h)(2) and (h)(4) are deleted. In addition, the reporting requirement contained in section 1087-2 is deleted in view of the new reporting requirements granted to the Secretary as part of the Secretary's supervisory authorities.

Section 321 sets out the new authority granted to the Secretary to ensure the capital adequacy of SLMA and to take prompt corrective action in the event an enterprise falls below a relevant capital measure. Under section 321(a), the Secretary is required to establish relevant capital measures for SLMA and to establish minimum risk-based capital levels for each measure that meet certain criteria. The minimum risk-based capital levels must exceed the leverage limit set forth in section 321(a)(2) and they must equal, in the Secretary's opinion, the sum of—

(1) an amount of capital sufficient to enable SLMA to maintain positive capital to cover for interest rate risk and credit risk, independently, under stressful economic circumstances determined by the Secretary;

(2) an amount of capital sufficient to protect against management risk, operations risk, and business risk; and

(3) an amount of capital sufficient to provide capital coverage at the margin for proposed new programs or lines of business whose risk characteristics are uncertain.

In assessing the impact of the stressful economic environments determined by the Secretary, the Secretary will use the most recent generally accepted analytical methodologies to measure the interest rate risk and credit risk presented by SLMA's method of conducting business.

Section 321(a)(2) sets forth a leverage limit which is equal to the sum of—

(1) 2 percent of total on-balance sheet assets, and

(2) such percentage of off-balance sheet obligations, if any, as the Secretary shall establish by regulation.

The Secretary is given the authority to establish by regulation a leverage limit above the specified level.

Finally, section 321(a)(3) provides for a critical capital level that is intended to, as a general matter, permit resolution of SLMA's problems without creating the potential for significant loss to the taxpayer. This level shall be 1 percent of total on-balance sheet assets, and such percentage of off-balance sheet assets as the Secretary may establish by regulation.

"On-balance sheet assets" and "off-balance sheet obligations" are to be determined in accordance with generally accepted accounting principles.

Based on the three capital levels just described, section 321 establishes four different levels into which SLMA may fall and sets forth specific actions that may be taken by the Secretary depending upon which level SLMA is in. The Secretary is required to promulgate the relations establishing the minimum risk-based capital levels within one year from the date of enactment. Beginning three years from the date of enactment, the Secretary may take any action authorized under section 321 (as described in greater detail below) for failure to meet the minimum risk-based capital level. The Director may take any action authorized under section 321 based upon failure to meet the statutory leverage limit beginning one year after the date of enactment. The Secretary may take action based upon failure to meet the critical capital level beginning January 1, 1992.

SLMA shall be within Level I if it maintains capital that is below the minimum risk-based capital level for any relevant capital measure and is not within Levels II, III, or IV as described below.

SLMA shall be within Level II if it maintains capital that is significantly below the minimum risk-based capital level for any relevant capital measure but that is at or exceeds the leverage limit, or is otherwise classified within Level II under other provisions of section 321.

SLMA shall be within Level III if it maintains capital that is below the leverage limit but that is at or exceeds the critical capital level, or is otherwise classified within Level III under other provisions of section 321.

SLMA shall be within Level IV if it maintains capital below the critical capital level.

Section 321(a)(7) provides that the Secretary may reclassify SLMA in Level I or Level II to Level III if the Secretary determines that SLMA is in an unsafe and unsound condition or is engaging in an unsafe and unsound practice.

Section 321(b) provides that the Secretary shall promulgate regulations and take such other actions as are necessary to implement the provisions of section 321. It further provides that the Secretary is authorized to issue such orders and take such other actions as are necessary or appropriate to carry out the purposes of section 321. Section 321(b) also provides that the Secretary shall by regulation specify the applicable capital levels for each relevant capital measure to delineate Levels I through IV as described above.

Finally, section 321(b) provides that when SLMA falls below the minimum risk-base capital levels, SLMA may undertake an activity under subsection (d), (o), (p) or (q) only with the approval of the Secretary, as provided in section 313. This section is not intended to give the Secretary the authority to approve or disapprove SLMA activities for programmatic reasons unrelated to safety and soundness.

Section 321(c) sets forth the mandatory supervisory actions that may be taken with re-

spect to SLMA if it is within Level I. The mandatory actions include restrictions on investments or other activities that are otherwise subject to review by the Secretary and restrictions on capital distributions.

Section 321(d) sets forth the mandatory and discretionary supervisory actions that may be taken with respect to SLMA if it is within Level II. The mandatory actions include a requirement to submit and implement an acceptable capital plan that will restore SLMA to Level I, restrictions on capital distributions, restrictions on investments and other activities that are otherwise subject to approval by the Secretary, and reclassification to Level III for failure to submit an acceptable capital plan or to implement it in good faith to the satisfaction of the Secretary.

The discretionary supervisory actions include the authority to limit any increase in, or order the reduction of, any liabilities; to restrict or require contraction of SLMA's assets; to restrict capital distributions; to require issuance of new capital; to restrict activities; and to limit executive compensation.

Section 321(e) includes the mandatory and discretionary supervisory actions applicable to SLMA if it is within Level III. The mandatory actions include a requirement to submit and implement an acceptable capital plan if one has not already been filed; a prohibition on capital distributions; a prohibition on expansion; a limitation on asset growth; and a limitation on compensation. The discretionary actions include the ability to impose further limits on executive compensation as well as authority to dismiss offiers and directors and the authority to appoint a conservator for SLMA.

Section 321(f) provides that the Secretary shall, within 30 days after determining that SLMA is within Level IV, appoint a conservator for SLMA. The conservator shall have the authority to take any mandatory or discretionary supervisory actions available in Levels II or III and shall also have the powers of a conservator as set forth in section 354.

The Secretary is given the authority to modify, defer, or remove any mandatory supervisory action applicable to any enterprise if the Secretary determines it to be in the public interest.

Section 321(g) sets forth the requirements of the capital restoration plan that is required as described above. The Secretary is generally required to act on a capital plan within 30 days after submission, but the Secretary is authorized to extend this time period.

Section 321(h) provides that any person aggrieved by an action of the Secretary under this section may obtain judicial review in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the circuit in which the concerned enterprise maintains its home office. An aggrieved person includes SLMA if it is the subject of a mandatory or discretionary supervisory action under Level I, II, or III; a person who has been dismissed as provided in this section; or a person whose compensation has been limited as provided in this section.

An action of the Secretary may be modified, terminated or set aside only if the reviewing court finds, on the record on which the Secretary acted, that the Secretary's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. No court shall have jurisdiciton to enjoin or otherwise delay agency action pending judicial review. However, petitions under this section will be given expedited review.

Section 322 imposes various reporting requirements on SLMA that are similar to the reporting requirements imposed on banks under the Federal Deposit Insurance Act ("FDA Act"). Section 322(a) requires SLMA to make annual reports of condition to the Secretary and authorizes the Secretary to call for such additional other reports as the Secretary determines to be necessary. The reports of condition shall be certified by an officer of SLMA as true and correct to the best of his or her knowledge and belief and shall be attested by at least three directors of SLMA.

Section 322(b) imposes three tiers of penalties for failure to make reports as required under this section. Section 322(c) also requires SLMA to make such reports to the Secretary on the payment of capital distributions as the Secretary deems necessary.

Section 323 authorizes the Secretary to appoint examiners who shall have the power to examine SLMA whenever the Secretary determiens that an examination is necessary to determine the condition of SLMA.

Section 324 establishes a safe harbor for SLMA if it receives the highest investment grade from two nationally-recognized statistical rating organizations ("NRSRO"). If the Secretary determines, after receiving ratings from two NRSROs, that SLMA merits the highest investment grade rating, SLMA shall be deemed to meet the minimum risk-based capital levels described above for one year following the effective date of the Secretary's determination. If the Secretary fails to make such a determination, the Secretary shall make a written finding setting forth the reasons. The safe harbor will be terminated prior to the end of the one-year period if either NRSRO notifies the Secretary, and the Secretary determines, that SLMA no longer merits the highest investment grade. The cost of the ratings will be covered by an assessment on SLMA. The Secretary may seek a rating of an enterprise from an NRSRO at any time to assist in carrying out the Secretary's responsibilities.

Sections 331 through 334 grant the Secretary authority to issue cease-and-desist orders or to remove or suspend officers or directors or SLMA that parallels the authority of the appropriate Federal banking agencies under section 8 of the FDI Act. Section 337 contains authority to impose civil money penalties under three different tiers. These penalties, like the penalties in the FDI Act on which they are modeled, are intended to be compensatory of costs and damages to the Government that are not readily susceptible to measurement. Nonetheless, since the imposition of these civil penalties may potentially preclude a subsequent criminal prosecution based on the same facts under the Double Jeopardy clause of the U.S. Constitution, *see United States v. Halper*, —— U.S. ——, 109 S. Ct. 1892 (1989), the Congress intends the Secretary and the Attorney General to work together to develop procedures to avoid undesired preclusion of subsequent criminal prosecutions.

Sections 351 through 357 contain conservatorship provisions that parallel provisions of the Bank Conservation Act (12 U.S.C. 200 *et seq.*). Section 351 provides the Secretary with the authority to appoint a conservator to take possession and control of SLMA whenever one or more of several circumstances exist, including classification in Level III or Level IV as described above. Section 351 also provides for judicial review of the appointment of a conservator. Section 352 authorizes examinations of enterprises in conservatorship. Section 353 provides for termination of a conservatorship. Section 354 sets forth the powers and duties of a conservator. Section 355 provides limits on the liability of a conservator and permits the Secretary to indemnify a conservator.

TITLE IV—JURISDICTION OF COURTS IN PROMPT CORRECTIVE ACTION

Section 401 amends Title 28 of the United States Code to grant the United States Claims Court jurisdiction over claims for damages against the United States where an action of the Secretary has been modified, termianted or set aside by a reviewing court.

TITLE V—FARM CREDIT SYSTEM

Section 501 would clarify the Funding Corporation's current authority under Section 4.9(b) of the Farm Credit Act of 1971 to set the "conditions of participation" by System banks "in each issue of joint, consolidated, or System-wide obligations." Section 501 specifically clarifies the Funding Corporation's authority to obtain information from System banks and associations to monitor their financial performance, to establish financial condition and performance standards, and to institute economic incentives designed to encourage compliance with such standards.

Section 502 would give the Farm Credit System Insurance Corporation the authority to require an assisted System bank's member associations to purchase additional capital in the bank, according to the following formula:

current stock of ind. association plus amount of additional stock to be purchased equals avg. indebtedness of assn. (over last 3 years)

total current stock plus total cap. of all associations required total avg. indebtedness of all assoc. (over last 3 years)

where X equals the amount of additional stock to be purchased by an individual association.

Section 502 would also give the Corporation the authority to require payments to the Insurance Fund from the associations of a bank for whose insured obligations the Corporation has made payments from the Insurance Fund.

Section 503 would give the Farm Credit Administration explicit authority to regulate Federal Agricultural Mortgage Corporation affiliates, and to use its rulemaking authority as a supervisory tool.

Section 511 would create an independent Farm Credit System Insurance Corporation with three voting and two non-voting members. The voting members would have financial expertise and be appointed by the President. The two non-voting members would consist of one member of the board of the Farm Credit Administration who is not its Chairman, and the Secretary of Agriculture.

Section 512 would require the Corporation to develop a method for charging System banks and institutions risk-based insurance premiums. These risk-based premiums would replace the current statutory premium formula.

Section 513 would clarify that the Corporation will be the successor to the Farm Credit System Assistance Board in its agreements with assisted System institutions.

Section 521 would require that the System banks consolidate so as to ensure geographic and crop-based diversity. The Farm Credit System would be charged with developing a plan to implement consolidation; if no plan is developed within two years, the Farm

Credit Administration would be required to develop one.

Section 531 would require System institutions to reimburse Treasury interest paid on Financial Assistance Corporation ("FAC") debt at the time of FAC debt maturity. The repayment would be allocated among System institutions based on their level of performing loans in the preceding 15 years. The FAC Trust Fund would be authorized to reimburse Treasury in the event a System institution does not. Legislation would be clarified to require that all Treasury interest assistance is to be repaid. System institutions would be authorized to prepay their FAC principal and interest obligations into the Farm Credit Assistance Fund.

Section 532 would clarify that FAC debt issued for Capital Preservation agreements is an obligation of the System banks.

Section 541 would require one-third of the directors of System institutions to be outside directors.•

By Mr. BUMPERS (for himself and Mr. PRYOR):

S. 1283. A bill to authorize extensions of time limitations in certain FERC-issued licenses; to the Committee on Energy and Natural Resources.

EXTENSION OF TIME ON CERTAIN LICENSES

• Mr. BUMPERS. Mr. President, I am today introducing, along with Senator PRYOR, legislation that would authorize the Federal Energy Regulatory Commission to extend modestly the deadlines in FERC-issued licenses for the development of hydroelectric capacity on two existing dams on the Arkansas River.

Mr. President, for several years Arkansas Electric Cooperative Corp. [AECC] has been diligently pursuing the installation of hydroelectric generation on the Arkansas River. Construction on the Clyde T. Ellis Hydroelectric Generating Station at Lock and Dam No. 13 was started in August 1985 and commercial operation began on December 8, 1988. Immediately thereafter, AECC began the process of securing the necessary permits for the installation of an $85 million hydroproject at Lock and Dam No. 9. Commercial operation is anticipated by October, 1993. AECC is meeting the existing deadlines in FERC-issued licenses for these two projects.

The legislation we are introducing today will allow FERC to extend key deadlines in AECC's licenses for the two remaining projects at Lock and Dam Nos. 2 and 3. For both of these, AECC is required to purchase the necessary property by October 16, 1991, a deadline it will be virtually impossible to meet. The deadline extensions we are proposing are modest ones. AECC will have reasonable extensions of time to purchase property and begin construction, but ultimately will have only a 1-year extension for completing the project at Dam No. 2—(license No. 3033)—and a 3-year extension for completing the project at Dam No. 3—license No. 3034.

Mr. President, in the original licensing and license extension proceedings for these two projects, there has never been an objection filed and FERC has consistently found that development will result in no significant long term environmental impacts. Moreover, as we are all aware, the enactment of the Clean Air Act Amendments of 1990 makes the installation of hydroelectric generation capacity on existing dams—capacity which emits no SO_2, NO_X, CO_2, or other pollutant—an even more attractive option.

On April 17, the Committee on Energy and Natural Resources agreed to this same language as an amendment to the omnibus energy legislation moving through the committee. I simply wanted to introduce this as a freestanding bill for referral to the committee, and I may ask the committee to report this bill separately. It is absolutely without controversy, and clearly is in the public interest.

Mr. President, I ask unanimous consent that an explanation of these provisions be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATION

This provision would allow FERC to extend the deadlines for complying with the provisions of FERC License Nos. 3033 and 3034 for a further reasonable period of time. The existing and proposed deadlines would be as follows:

License	Deadline	Existing	Proposed
No. 3033	Land purchase	Oct. 16, 1991	Aug. 10, 1994
	Commence construction.	Aug. 10, 1993	Aug. 10, 1994
	Complete construction.	Aug. 10, 1998	Aug. 10, 1999
No. 3034	Land purchase	Oct. 16, 1991	Aug. 10, 1996
	Commence construction.	Aug. 10, 1993	Aug. 10, 1996
	Complete construction.	Aug. 10, 1998	Aug. 10, 2001.•

ADDITIONAL COSPONSORS

S. 14

At the request of Mr. SARBANES, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 14, a bill to assist in the restoration of the Chesapeake Bay, and for other purposes.

S. 139

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 139, a bill to amend the Internal Revenue Code to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 239

At the request of Mr. SARBANES, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Georgia [Mr. NUNN] were added as cosponsors of S. 239, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

S. 323

At the request of Mr. CHAFEE, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 323, a bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes.

S. 387

At the request of Mr. MACK, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 387, a bill to amend title XVIII of the Social Security Act to provide an additional payment under part A of the medicare program for the operating costs of inpatient hospital services of hospitals with a high proportion of patients who are medicare beneficiaries.

S. 447

At the request of Mr. THURMOND, the names of the Senator from Arizona [Mr. DECONCINI], the Senator from Iowa [Mr. HARKIN], and the Senator from Maine [Mr. COHEN] were added as cosponsors of S. 447, a bill to recognize the organization known as The Retired Enlisted Association, Incorporated.

S. 659

At the request of Mr. GRAHAM, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 659, a bill to suspend temporarily certain bars to the furnishing of veterans benefits to certain former spouses of veterans and to suspend temporarily a bar to the recognition of certain married children of veterans for veterans benefits purposes.

S. 776

At the request of Mr. KENNEDY, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 776, a bill to require that humanitarian assistance to Cambodia be provided through international organizations and private and voluntary organizations and to prohibit assistance to combat forces seeking to overthrow the Government of Cambodia.

S. 790

At the request of Mr. DECONCINI, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 790, a bill to amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market.

S. 810

At the request of Mr. HARKIN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 810, a bill to improve counseling services for elementary school children.

S. 838

At the request of Mr. DODD, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 838, a bill to amend the Child Abuse Prevention and Treatment Act to re-

vise and extend programs under such Act, and for other purposes.

S. 878

At the request of Mr. DODD, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 878, a bill to assist in implementing the Plan of Action adopted by the World Summit for Children, and for other purposes.

S. 891

At the request of Mr. MACK, the names of the Senator from Mississippi [Mr. LOTT], the Senator from Idaho [Mr. CRAIG], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of S. 891, a bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for qualified cancer screening tests.

S. 922

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 922, a bill to amend the Internal Revenue code of 1986 to exclude from gross income payments made by electric utilities to customers to subsidize the cost of energy conservation services and measures.

S. 1092

At the request of Mr. KASSEBAUM, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 1092, a bill to permit national banking associations to establish and operate branches in States other than the States in which their main offices are located, subject to applicable State statutory law.

S. 1093

At the request of Mr. BIDEN, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1093, a bill to establish a commission to study the feasibility, effect, and implications for United States foreign policy, of instituting a radio broadcasting service to the People's Republic of China to promote the dissemination of information and ideas to that nation, with particular emphasis on developments in China itself.

S. 1234

At the request of Mr. DIXON, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 1234, a bill to amend the Internal Revenue Code of 1986 to provide tax relief to utilities installing acid rain reduction equipment.

S. 1261

At the request of Mr. DOLE, the names of the Senator from New York [Mr. D'AMATO] and the Senator from Florida [Mr. MACK] were added as cosponsors of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

SENATE JOINT RESOLUTION 39

At the request of Mr. THURMOND, the names of the Senator from Virginia [Mr. WARNER], the Senator from New York [Mr. D'AMATO], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Alaska [Mr. STEVENS], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of Senate Joint Resolution 39, a joint resolution to designate the month of September 1991, as "National Awareness Month for Children with Cancer."

SENATE JOINT RESOLUTION 61

At the request of Mr. FORD, the names of the Senator from Kentucky [Mr. MCCONNELL], the Senator from Washington [Mr. ADAMS], the Senator from Hawaii [Mr. AKAKA], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Arkansas [Mr. BUMPERS], the Senator from Montana [Mr. BURNS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Dakota [Mr. CONRAD], the Senator from South Dakota [Mr. DASCHLE], the Senator from Arizona [Mr. DECONCINI], the Senator from Illinois [Mr. DIXON], the Senator from Connecticut [Mr. DODD], the Senator from Kansas [Mr. DOLE], the Senator from New Mexico [Mr. DOMENICI], the Senator from Vermont [Mr. JEFFORDS], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Vermont [Mr. LEAHY], the Senator from Michigan [Mr. LEVIN], the Senator from Indiana [Mr. LUGAR], the Senator from Maine [Mr. MITCHELL], the Senator from New York [Mr. MOYNIHAN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from North Carolina [Mr. SANFORD], the Senator from Tennessee [Mr. SASSER], the Senator from Alabama [Mr. SHELBY], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Idaho [Mr. SYMMS], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 61, a joint resolution to designate June 1, 1992, as "Kentucky Bicentennial Day."

SENATE JOINT RESOLUTION 72

At the request of Mr. SPECTER, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of Senate Joint Resoluton 72, a joint resolution to designate the week of September 15, 1991, through September 21, 1991, as "National Rehabilitation Week."

SENATE JOINT RESOLUTION 136

At the request of Mr. RIEGLE, the names of the Senator from Arizona [Mr. MCCAIN], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of Senate Joint Resoluton 136, a joint resolution to authorize the display of the POW-MIA flag on flagstaffs at the national cemeteries of the United States, and for other purposes.

AMENDMENT NO. 295

At the request of Mr. DASCHLE, his name was added as a cosponsor of amendment No. 295 proposed to S. 1204, an original bill to amend title 23, United States Code, and for other purposes.

AMENDMENT NO. 296

At the request of Mr. DASCHLE, his name was added as a cosponsor of amendment No. 296 proposed to S. 1204, an original bill to amend title 23, United States Code, and for other purposes.

AMENDMENT NO. 300

At the request of Mr. BURNS, the name of the Senator from Arizona [Mr. DECONCINI] his name was added as a cosponsor of amendment No. 300 proposed to S. 1204, an original bill to amend title 23, United States Code, and for other purposes.

AMENDMENTS SUBMITTED

SURFACE TRANSPORTATION EFFICIENCY ACT

REID AMENDMENT NO. 304

Mr. REID proposed an amendment to the bill (S. 1204) to amend title 23, United States Code, and for other purposes, as follows:

Strike section 137 of the bill.

SYMMS (AND OTHERS) AMENDMENT NO. 305

Mr. SYMMS (for himself, Mr. BOREN, Mr. BROWN, Mr. BURNS, Mr. COATS, Mr. COCHRAN, Mr. CONRAD, Mr. CRAIG, Mr. DECONCINI, Mr. DIXON, Mr. GARN, Mr. GRASSLEY, Mr. HATCH, Mr. HEFLIN, Mr. HELMS, Mr. LUGAR, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. PACKWOOD, Mr. SEYMOUR, Mr. SIMPSON, Mr. SMITH, Mr. WALLOP, and Mr. SHELBY) proposed an amendment to the bill S. 1204, supra, as follows:

At the appropriate place insert the following new section:

"SECTION . PRIVATE PROPERTY RIGHTS ACT.

"(a) This section may be cited as the "Private Property Rights Act".

"(b) DEFINITIONS.—As used in this section:

"(1) The term "agency" means all executive branch agencies, including any military department of the United States Government, any United States Government corporation, United States Government controlled corporation, or other establishment in the executive branch of the United States Government.

"(2) The term "taking of private property" means an activity wherein private property is taken such that compensation to the owner of that property is required by the fifth amendment to the Constitution of the United States.

"(c) PROTECTION OF PRIVATE PROPERTY.—No regulation promulgated after the date of enactment of this Act by any agency shall become effective until the issuing agency is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity, with the goal of minimizing such where possible.

"(d) JUDICIAL REVIEW.—

"(1) Judicial review of actions taken pursuant to this section shall be limited to wheth-

er the Attorney General has certified the issuing agency as in compliance with Executive Order 12630 or similar procedures, such review to be permitted in the same forum and at the same time as the issued regulations are otherwise subject to judicial review. Only persons adversely affected or grieved by agency action shall have standing to challenge that action as contrary to this seciton. In no event shall such review include any issue for which the United States Claims Court has jurisdiction.

"(2) Nothing in this subsection shall affect any other available judicial review of agency action.

SYMMS (AND OTHERS) AMENDMENT NO. 306

Mr. SYMMS (for himself, Mr. BOREN, Mr. BROWN, Mr. BURNS, Mr. COATS, Mr. COCHRAN, Mr. CONRAD, Mr. CRAIG, Mr. DECONCINI, Mr. DIXON, Mr. GARN, Mr. GRASSLEY, Mr. HATCH, Mr. HEFLIN, Mr. HELMS, Mr. LUGAR, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. PACKWOOD, Mr. SEYMOUR, Mr. SIMPSON, Mr. SMITH, Mr. WALLOP, and Mr. SHELBY) proposed an amendment to amendment No. 305 proposed by Mr. SYMMS (and others) to the bill S. 1204, supra, as follows:

Strike all after the word "SECTION" and insert the following:

" . PRIVATE PROPERTY RIGHTS ACT.

"(a) This section may be cited as the "Private Property Rights Act".

"(b) DEFINITIONS.—As used in this section:

"(1) The term "agency" means all executive branch agencies, including any military department of the United States Government, any United States Government corporation, United States Government controlled corporation, or other establishment in the executive branch of the United States Government.

"(2) The term "taking of private property" means an activity wherein private property is taken such that compensation to the owner of that property is required by the fifth amendment to the Constitution of the United States.

"(c) PROTECTION OF PRIVATE PROPERTY.—

(1) No regulation promulgated after the date of enactment of this Act by any agency shall become effective until the issuing agency is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity, with the goal of minimizing such where possible.

(2) Upon receipt of guidelines proposed by an agency for compliance with the procedures referenced in paragraph (1), the Attorney General shall, in a reasonably expeditous manner, either approve such guidelines, or notify the head of such agency of any revisions or modification necessary to obtain approval.

"(d) JUDICIAL REVIEW.—

"(1) Judicial review of actions or asserted failures to act pursuant to this section shall be limited to whether the Attorney General has certified the issuing agency as in compliance with Executive Order 12630 or similar procedures, such review to be permitted in the same forum and at the same time as the issued regulations are otherwise subject to judicial review. Only persons adversely affected or grieved by agency action shall have standing to challenge that action as contrary to this section. In no event shall such review include any issue for which the United States Claims Court has jurisdiction.

"(2) Nothing in this subsection shall affect any otherwise available judicial review of agency action."

GORTON (AND OTHERS) AMENDMENT NO. 307

Mr. GORTON (for himself, Mr. HOLLINGS, Mr. DANFORTH, Mr. EXON, and Mr. BRYAN) proposed an amendment to the bill S. 1204, supra, as follows:

At the end of the bill, add the following new title:

TITLE II—HIGHWAY SAFETY

PART A—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AUTHORIZATION

SEC. 201. SHORT TITLE.

This part may be cited as the "National Highway Traffic Safety Administration Authorization Act of 1991".

SEC. 202. DEFINITIONS.

As used in this part, the term—

(1) "bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons;

(2) "multipurpose passenger vehicle" means a motor vehicle with motive power (except a trailer), designed to carry 10 persons or fewer, which is constructed either on a truck chassis or with special features for occasional off-road operation;

(3) "passenger car" means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer), designed for carrying 10 persons or fewer; and

(4) "truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

(a) TRAFFIC AND MOTOR VEHICLE SAFETY PROGRAM.—For the National Highway Traffic Safety Administration to carry out the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), there are authorized to be appropriated $68,722,000 for fiscal year 1992, $71,333,436 for fiscal year 1993, and $74,044,106 for fiscal year 1994.

(b) MOTOR VEHICLE INFORMATION AND COST SAVINGS PROGRAMS.—For the National Highway Traffic Safety Administration to carry out the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), there are authorized to be appropriated $6,485,000 for fiscal year 1992, $6,731,430 for fiscal year 1993, and $6,987,224 for fiscal year 1994.

(c) NATIONAL DRIVER REGISTER ACT.—Section 211(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by striking "and" the second time it appears; and

(2) by inserting immediately before the period at the end the following: ", not to exceed $6,131,000 for fiscal year 1992, not to exceed $6,363,978 for fiscal year 1993, and not to exceed $6,605,809 for fiscal year 1994".

(d) NHTSA HIGHWAY SAFETY PROGRAMS.—For the National Highway Traffic Safety Administration to carry out section 402 of title 23, United States Code, there are authorized to be appropriated, out of the Highway Trust Fund (other than the Mass Transit Account), $126,000,000 for fiscal year 1992, $130,788,000 for fiscal year 1993, $135,757,944 for fiscal year 1994, $140,916,745 for fiscal year 1995, and $146,271,573 for fiscal year 1996.

(e) NHTSA HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—For the National Highway Traffic Safety Administration to carry out section 403 of title 23, United States Code, there are authorized to be appropriated, out of the Highway Trust Fund (other than the Mass Transit Account), $45,869,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996.

SEC. 204. INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

The Secretary shall expend the sums authorized under section 203(e) as the Secretary deems necessary for the purpose of conducting research or intelligent vehicle-highway systems. The Secretary shall develop a strategic plan with specific milestones, goals, and objectives for that research. The research should place particular emphasis on aspects of those systems that will increase safety, and should identify any aspects of the systems that might degrade safety.

SEC. 205. SIDE IMPACT PROTECTION FOR VEHICLES.

(a) AMENDMENT OF FMVSS STANDARD 214.—The Secretary shall, not later than 12 months after the date of enactment of this Act, issue a final rule amending Federal Motor Vehicle Safety Standard 214, published as section 571.214 of title 49, Code of Federal Regulations. The rule shall establish performance criteria for improved head injury protection for occupants of passenger cars in side impact accidents.

(b) EXTENSION TO MULTIPURPOSE PASSENGER VEHICLES.—Not later than 18 months after the date of enactment of this Act, the Secretary shall issue a final rule to extend the applicability of such Standard 214 to multipurpose passenger vehicles, taking into account the performance criteria established by the final rule issued in accordance with subsection (a).

SEC. 206. AUTOMOBILE CRASHWORTHINESS DATA.

(a) STUDY AND INVESTIGATION.—

(1) ARRANGEMENTS WITH NATIONAL ACADEMY OF SCIENCES.—The Secretary shall, within 30 days after the date of enactment of this Act, enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation regarding means of establishing a method for calculating a uniform numerical rating, or series of ratings, which will enable consumers to compare meaningfully the crashworthiness of different passenger and multipurpose passenger vehicle makes and models.

(2) CONTENTS OF STUDY.—Such study shall include examination of current and proposed crashworthiness tests and testing procedures and shall be directed to determining whether additional objective, accurate, and relevant information regarding the comparative crashworthiness of different passenger car and multipurpose passenger vehicle makes and models reasonably can be provided to consumers by means of a crashworthiness rating rule. Such study shall include examination of at least the following proposed elements of a crashworthiness rating rule:

(A) information on the degree to which different passenger car and multipurpose passenger vehicle makes and models will protect occupants across the range of motor vehicle crash types when in use on public roads;

(B) a repeatable and objective test which is capable of identifying meaningful differences in the degree of crash protection provided occupants by the vehicles tested, with respect to such aspects of crashworthiness as occupant crash protection with and without use of manual seatbelts, fuel system integrity, and other relevant aspects;

(C) ratings which are accurate, simple in form, readily understandable, and of benefit to consumers in making informed decisions in the purchase of automobiles;

(D) dissemination of comparative crashworthiness ratings to consumers either at the time of introduction of a new passenger car or multipurpose passener vehicle make or model or very soon after such time of introduction; and

(E) the development and dissemination of crashworthiness data at a cost which is reasonably balanced with the benefits of such data to consumers in making informed purchase decisions.

(3) REPORT BY NATIONAL ACADEMY OF SCIENCES.—Any such arrangement shall require the National Academy of Sciences to report to the Secretary and the Congress not later than 19 months after the date of enactment of this Act on the results of such study and investigation, together with its recommendations. The Secretary shall, to the extent permitted by law, furnish to the Academy upon its request any information which the Academy considers necessary to conduct the investigation and study required by this subsection.

(4) PUBLIC COMMENT.—Within 60 days after transmittal of the report to the National Academy of Sciences to the Secretary and the Congress under paragraph (3), the Secretary shall initiate a period (not longer than 90 days) for public comment on implementation of the recommendations of the National Academy of Sciences with respect to a rule promulgated under title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger cars and multipurpose passenger vehicles.

(5) DETERMINATION BY SECRETARY.—Not later than 180 days after the close of the public comment period provided for in paragraph (4) of this subsection, the Secretary shall determine on the basis of the report of the National Academy of Sciences and the public comments on such report, whether an objectively based system can be established by means of which accurate and relevant information can be derived that reasonably predicts the degree to which different makes and models of passenger cars and multipurpose passenger vehicles provide protection to occupants against the risk of personal injury or death as a result of motor vehicle accidents. The Secretary shall promptly publish the basis of such determination, and shall transmit such determination to the Congress.

(b) RULE ON COMPARATIVE CRASHWORTHINESS RATING SYSTEM.—

(1) PROMULGATION.—If the Secretary determines that the system described in subsection (a)(5) can be established, the Secretary shall, subject to the exception provided in paragraph (2), not later than 3 years after the date of enactment of this Act, promulgate a final rule under section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger cars and multipurpose passenger vehicles. This rule promulgated under such section 201 shall be practicable and shall provide to the public relevant objective information in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger cars and multipurpose passenger vehicles so as to contribute meaningfully to informed purchase decisions.

(2) REVIEW BY CONGRESSIONAL COMMITTEE.—The Secretary shall not promulgate such rule unless—

(A) a period of 60 calendar days has passed after the Secretary has transmitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives a summary of the comments received during the period for public comment specified in subsection (a)(4); or

(B) each such committee before the expiration of such 60-day period has transmitted to the Secretary written notice to the effect that such committee has no objection to the promulgation of such rule.

(c) RULE ON PROVIDING CRASHWORTHINESS INFORMATION TO PURCHASERS.—If the Secretary promulgates a rule under subsection (b), not later than 6 months after such promulgation, the Secretary shall by rule establish procedures requiring passenger cars and multipurpose passenger vehicle dealers to make available to prospective passenger car and multipurpose passenger vehicle purchasers information developed by the Secretary and provided to the dealer which contains data comparing the crashworthiness of passenger cars and multipurpose passenger vehicles.

SEC. 207. STANDARDS COMPLIANCE.

Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) is amended by adding at the end of the following new subsection:

"(j)(1) The Secretary shall establish a schedule for use in ensuring compliance with each Federal motor vehicle safety standard established under this Act which the Secretary determines is capable of being tested. Such schedule shall ensure that each such standard is the subject of testing and evaluation on a regular, rotating basis.

"(2) The Secretary shall, not later than 6 months after the date of enactment of this subsection, conduct a review of the method for the collection of data regarding accidents related to Federal motor vehicle safety standards established under this Act. The Secretary shall consider the desirability of collecting data in addition to that information collected as of the date of enactment of this subsection, and shall estimate the costs involved in the collection of such additional data, as well as the benefits to safety likely to be derived from such collection. If the Secretary determines that such benefits outweigh the costs of such collection, the Secretary shall collect such additional data and utilize it in determining which motor vehicles should be the subject of testing for compliance with Federal motor vehicle safety standards established under this Act.".

SEC. 208. INVESTIGATION AND PENALTY PROCEDURES.

(a) INVESTIGATION PROCEDURES.—Section 112(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401(a)(1)) is amended by adding at the end the following: "The Secretary shall establish written guidelines and procedures for conducting any inspection or investigation regarding noncompliance with this title or any rules, regulations, or orders issued under this title. Such guidelines and procedures shall indicate timetables for processing of such inspections and investigations to ensure that such processing occurs in an expeditious and thorough manner. In addition, the Secretary shall develop criteria and procedures for use in determining when the results of such an investigation should be considered by the Secretary to be the subject of a civil penalty under section 109 of this title. Nothing in this paragraph shall be construed to limit the ability of the Secretary to exceed any time limitation specified in such timetables where the Secretary determines that additional time is necessary for the processing of any such inspection or investigation.".

(b) CIVIL PENALTY PROCEDURES.—Section 109(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1398(a)) is amended by adding at the end the following: "The Secretary shall establish procedures for determining the manner in which, and the time within which, a determination should be made regarding whether a civil penalty should be imposed under this section. Nothing in this subsection shall be construed to limit the ability of the Secretary to exceed any time limitation specified for making any such determination where the Secretary determines that additional time is necessary for making a determination regarding whether a civil penalty should be imposed under this section.".

SEC. 209. MULTIPURPOSE PASSENGER VEHICLE SAFETY.

(a) FINDINGS.—The Congress finds that—

(1) multipurpose passenger vehicles have become increasingly popular during this decade and are being used increasingly for the transportation of passengers, not property; and

(2) the safety of passengers in multipurpose passenger vehicles has been compromised by the failure to apply to them the Federal motor vehicle safety standards applicable to passenger cars.

(b) CLASSIFICATION REVIEW.—

(1) RULEMAKING PROCEEDING.—In accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms, the Secretary shall, not later than 12 months after the date of enactment of this Act, complete a rulemaking proceeding to review the system of classification of vehicles with a gross vehicle weight under 10,000 pounds to determine if such vehicles should be reclassified.

(2) CLASSIFICATION CONSISTENCY.—Any reclassification pursuant to paragraph (1) shall, to the maximum extent practicable, classify as a passenger car every motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor car or other motor vehicle principally designed for the transport of persons under heading 8703 of the Harmonized Tariff Schedule of the United States. Nothing in this section shall prevent the Secretary from classifying as a passenger car any motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor vehicle for the transport of goods under heading 8704 of such Harmonized Tariff Schedule.

SEC. 210. ROLLOVER PROTECTION.

The Secretary shall, within 12 months after the date of enactment of this Act, complete a rulemaking proceeding to consider establishment of a Federal Motor Vehicle Safety Standard to protect against unreasonable risk of rollover of passenger cars and multipurpose passenger vehicles.

SEC. 211. REAR SEATBELTS.

The Secretary shall expend such portion of the funds authorized to be appropriated under the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), for each of the fiscal years 1992 and 1993, as the Secretary deems necessary for the purpose of disseminating information to consumers regarding the manner in which passenger cars may be retrofitted with lap and shoulder rear seatbelts.

SEC. 212. IMPACT RESISTANCE CAPABILITY OF BUMPERS.

(a) DISCLOSURE OF BUMPER IMPACT CAPABILITY.—The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) is amended by inserting immediately after section 102 the following new subsection:

"DISCLOSURE OF BUMPER IMPACT CAPABILITY

"SEC. 102A.(a) The Secretary shall promulgate, in accordance with the provisions of this section, a regulation establishing passenger motor vehicle bumper system labeling requirements. Such regulation shall apply to passenger motor vehicles manufactured for model years beginning more than 180 days after the date such regulation is promulgated, as provided in subsection (c)(2) of this section.

"(b)(1) The regulation required to be promulgated in subsection (a) of this section shall provide that, before any passenger motor vehicle is offered for sale, the manfacturer shall affix a label to such vehicle, in a format prescribed in such regulation, disclosing an impact speed at which the manufacturer represents that the vehicle meets the applicable damage criteria.

"(2) For purposes of this subsection, the term 'applicable damage criteria' means the damage criteria applicable under section 581.5(c) of title 49, Code of Federal Regulations (as in effect on the date of enactment of this section).

"(c)(1) Not later than 90 days after the date of enactment of this section, the Secretary shall publish in the Federal Register a proposed initial regulation under this section.

"(2) Not later than 180 days after such date of enactment, the Secretary shall promulgate a final initial regulation under this section.

"(d) The Secretary may allow a manufacturer to comply with the labeling requirements of subsection (b) of this section by permitting such manufacturer to make the bumper system impact speed disclosure required in subsection (b) of this section on the label required by section 506 of this Act or section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

"(e) The regulation promulgated under subsection (a) of this section shall provide that the information disclosed under this section be provided to the Secretary at the beginning of the model year for the model involved. As soon as practicable after receiving such information, the Secretary shall furnish and distribute to the public such information in a simple and readily understandable form in order to facilitate comparison among the various types of passenger motor vehicles. The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

"(f) For purposes of this section, the term 'passenger motor vehicle' means any motor vehicle to which the standard under part 581 of title 49, Code of Federal Regulations, is applicable.".

(b) AMENDMENT OF BUMPER STANDARD.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall amend the bumper standard published as part 581 of title 49, Code of Federal Regulations, to ensure that such standard is identical to the bumper standard under such part 581 which was in effect on January 1, 1982. The amended standard shall apply to all passenger cars manufactured after September 1, 1992.

(2) AUTHORITY TO REQUIRE HIGHER STANDARD.—Nothing in this subsection shall be construed to prohibit the Secretary from requiring under such part 581 that passenger car bumpers be capable of resisting impact speeds higher than those specified in the bumper standard in effect under such part 581 on January 1, 1982.

SEC. 213. CHILD BOOSTER SEATS.

(a) IN GENERAL.—In accordance with applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Secretary shall conduct a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard 213, published as section 571.213 of title 49, Code of Federal Regulations, to increase the safety of child booster seats used in passenger cars. The proceeding shall be initiated not later than 30 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

(b) DEFINITION.—As used in this section, the term "child booster seat" has the meaning given the term "booster seat" in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

SEC. 214. AIRBAG REQUIREMENTS.

(a) AIRBAGS FOR CARS ACQUIRED FOR FEDERAL USE.—The Secretary, in cooperation with the Administrator of General Services and the heads of other appropriate Federal agencies, shall establish a program requiring that all passenger cars acquired after September 30, 1991, for use by the Federal Government be equipped, to the maximum extent practicable, with driver-side airbags and that all passenger cars acquired after September 30, 1993, for use by the Federal Government be equipped, to the maximum extent practicable, with airbags for both the driver and front seat outboard seating positions.

(b) AIRBAGS FOR CERTAIN OTHER VEHICLES.—

(1) DEADLINES FOR INSTALLATION.—Passenger cars, and those trucks, buses, and multipurpose passenger vehicles that have a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, shall, in accordance with the following schedule, be equipped with airbags complying with the occupant crash protection requirements under S4.1.2.1 of Federal Motor Vehicle Safety Standard 208, published as section 571.208 of title 49, Code of Federal Regulations:

(A) All passenger cars manufactured on and after September 1, 1995, shall be so equipped for both the driver and right front seat outboard seating positions.

(B) All such trucks, buses, and multipurpose passenger vehicles manufactured on and after September 1, 1996, and before September 1, 1997, shall, at a minimum, be so equipped for the driver side.

(C) All such trucks, buses, and multipurpose passenger vehicles manufactured on and after September 1, 1997, shall be so equipped for both the driver and right front seat outboard seating positions.

(2) TREATMENT OF AIRBAG REQUIREMENTS.—For purposes of sections 108 through 112, 114, 115, 116, 118, 120, 121, and 151 through 158 of the National Traffic and Motor Vehicle safety Act of 1966 (15 U.S.C. 1397 through 1401, 1403, 1404, 1405, 1406, 1408, 1409, and 1411 through 1418), the requirements of paragraph (1) of this subsection are deemed to be a Federal motor vehicle safety standard prescribed pursuant to section 103 of that Act (15 U.S.C. 1392).

SEC. 215. STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS.

Part A of title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 et seq.) is amended by adding at the end the following new section:

"STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

"SEC. 304. (a) The Congress finds that—

"(1) State motor vehicle safety inspection programs, when properly administered, can reduce the rate of highway traffic accidents by a significant percentage;

"(2) the 1990 amendments to the Clean Air Act will subject approximately 60 percent of the vehicles in the United States to emissions inspection;

"(3) as States plan to implement the requirement for emissions inspections, there is considerable potential for simultaneously and economically implementing effective motor vehicle safety inspection programs;

"(4) the Secretary, as part of the effort to reduce highway accidents, should make every effort to ensure that the potential for effective State motor vehicle safety inspection programs is realized; and

"(5) the Secretary and the Administrator of the Environmental Protection Agency shall coordinate their efforts so as to ensure maximum coordination of motor vehicle safety inspections and required emissions inspections.

"(b) The Secretary shall, within six months after the date of enactment of this section and every year thereafter, submit a report to Congress detailing the efforts of the Secretary to ensure that State motor vehicle safety inspection programs are implemented in the most effective manner possible. The report shall—

"(1) specify Federal manpower allocations for support of State motor vehicle safety inspection efforts;

"(2) specify allocations and expenditures of Federal funds on such efforts;

"(3) describe the extent and effect of the coordination by the Secretary and the Administrator of the Environmental Protection Agency of their respective efforts regarding motor vehicle safety inspection and required emissions inspections, and of the coordination of State motor vehicle safety inspections and emissions inspections;

"(4) list the States that do not have a periodic safety inspection program for motor vehicles that meets the requirements of Highway Safety Program Standard Number 1 and part 570 of title 49, Code of Federal Regulations; and

"(5) include any data, furnished by the States that do operate such safety inspection programs, that concerns the relative effectiveness of their particular programs.".

SEC. 216. RECALL OF CERTAIN MOTOR VEHICLES.

(a) NOTIFICATION OF DEFECT OR FAILURE TO COMPLY.—Section 153 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1413) is amended by adding at the end the following new subsections:

"(d) If the Secretary determines that a notification sent by a manufacturer pursuant to subsection (c) of this section has not resulted in an adequate number of vehicles or items of equipment being returned for remedy, the Secretary may direct the manufacturer to send a second notification in such

manner as the Secretary may by regulation prescribe.

"(e)(1) Any lessor who receives a notification required by section 151 or 152 pertaining to any leased motor vehicle shall send a copy of such notice to the lessee in such manner as the Secretary may by regulation prescribe.

"(2) For purposes of this subsection, the term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of the notification.".

(b) LIMITATION ON SALE OR LEASE OF CERTAIN VEHICLES.—Section 154 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1414) is amended by adding at the end the following:

"(d) If notification is required under section 151 or by an order under section 152(b) and has been furnished by the manufacturer to a dealer of motor vehicles with respect to any new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, such dealer may sell or lease such motor vehicle or item or replacement equipment only if—

"(1) the defect or failure to comply has been remedied in accordance with this section before delivery under such sale or lease; or

"(2) in the case of notification required by an order under section 152(b), enforcement of the order has been restrained in an action to which section 155(a) applies or such order has been set aside in such an action.

Nothing in this subsection shall be construed to prohibit any dealer from offering for sale or lease such vehicle or item of equipment.".

SEC. 217. DARKENED WINDOWS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding on the use of darkened windshields and window glass in passenger cars and multipurpose passenger vehicles, including but not limited to the issue of—

(1) the harmonization of light transmittance requirements for multipurpose passenger vehicles with light transmittance requirements for passenger cars;

(2) performance requirements for light transmittance; and

(3) appropriate levels of light transmittance.

The proceeding shall consider the effects of such issues in the context of the safe operation of passenger cars and multipurpose passenger vehicles, as well as on the hazards to the safety of law enforcement personnel as a result of such use of darkened windshields and window glass.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 6 months after the date of enactment of this Act and completed not later than 18 months after such date of enactment.

SEC. 218. GRANT PROGRAM CONCERNING USE OF SEATBELTS AND CHILD RESTRAINT SYSTEMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§411. Seatbelt and child restraint programs

"(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement seatbelt and child restraint programs which include measures described in this section to foster the increased use of seatbelts and the correct use of child restraint systems. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for seatbelt and child restraint programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the seatbelt and child restraint program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) Subject to subsection (c), the amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) of this section shall equal 20 percent of the amount apportioned to such State for fiscal year 1991 under section 402.

"(e) A State is eligible for a grant under this section if such State—

"(1) has in force and effect a law requiring all front seat occupants of a passenger car to use seatbelts;

"(2) has achieved—

"(A) in the year immediately preceding a first-year grant, the lesser of either (i) 70 percent seatbelt use by all front seat occupants of passenger cars in the State or (ii) a rate of seatbelt use by all such occupants that is 20 percentage points higher than the rate achieved in 1990;

"(B) in the year immediately preceding a second-year grant, the lesser of either (i) 80 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 35 percentage points higher than the rate achieved in 1990; and

"(C) in the year immediately preceding a third-year grant, the lesser of either (i) 90 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 45 percentage points higher than the rate achieved in 1990; and

"(3) has in force and effect an effective program, as determined by the Secretary, for encouraging the correct use of child restraint systems.

"(f) As used in this section, the term 'child restraint system' has the meaning given such term in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

"(g) There are authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, to carry out this section, $10,000,000 for the fiscal year 1991, and $20,000,000 for each of the fiscal years 1992 and 1993.".

(b) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"411. Seatbelt and child restraint programs.".

SEC. 219. METHODS OF REDUCING HEAD INJURIES.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider methods of reducing head injuries in passenger cars and multipurpose passenger vehicles from contact with vehicle interior components, including those in the head impact area as defined in section 571.3(b) of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act, and to revise the Federal motor vehicle safety standards as appropriate.

(b) DEADLINES.—The proceeding required under subsection (a) shall be initiated not less than 60 days after the date of enactment of this Act and completed not later than 2 years after such date of enactment.

SEC. 220. PEDESTRIAN SAFETY.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider the establishment of a standard to minimize pedestrian death and injury, including injury to the head, thorax, and legs, attributable to vehicle components.

(b) DEADLINES.—The proceeding required under subsection (a) shall be initiated not later than 6 months after the date of enactment of this Act and completed not later than 2 years after such date of enactment.

SEC. 221. DAYTIME RUNNING LIGHTS.

(a) RULEMAKING PROCEEDING.—Not later than 12 months after the date of enactment of this Act, the Secretary shall complete a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard 108, published as section 571.108 of title 49, Code of Federal Regulations, to authorize passenger cars and multipurpose passenger vehicles to be equipped with daytime running lights, notwithstanding any State law or regulation that affects the use of such lights.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the safety implications of the use of such lights in the United States, including the recommendations of the Secretary concerning whether to require passenger cars and multipurpose passenger vehicles to be equipped with such lights.

SEC. 222. ANTILOCK BRAKE SYSTEMS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding concerning whether to adopt a Federal motor vehicle safety standard requiring antilock brake systems for all passenger cars and multipurpose passenger vehicles manufactured after September 1, 1996.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 223. HEADS-UP DISPLAYS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider the establishment of a standard requiring that passenger cars and multipurpose passenger vehicles shall be equipped with heads-up displays capable of projecting speed, fuel, and other instrument readings on the lower part of the windshield, enabling the driver to check such readings without looking down.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of

this Act and completed not later than 12 months after such date of enactment.

SEC. 224. SAFETY BELT DESIGN.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider whether to amend any existing standard applicable to seatbelts, as published under part 571 of title 49, Code of Federal Regulations, for modification of seatbelt design in order to take into account the needs of children and short adults.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 225. CRITERIA FOR STANDARDS.

Any standard established under a proceeding required by section 210, 217, 219, 220, 221, 222, 223, or 224 shall be in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of that Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

SEC. 226. IMPAIRED DRIVING ENFORCEMENT.

(a) SHORT TITLE.—This section may be cited as the "Impaired Driving Prevention Act of 1991".

(b) ESTABLISHMENT OF GRANT PROGRAM.—Chapter 4 of title 23, United States Code, is amended by inserting immediately after section 404 the following new section:

"§ 405. Impaired driving enforcement programs

"(a) GENERAL AUTHORITY.—Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement impaired driving enforcement programs which include measures, described in this section, to improve the effectiveness of the enforcement of laws to prevent impaired driving. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for impaired driving enforcement programs at or above the average level of such expenditures in its 2 fiscal years preceding the fiscal year in which this section is enacted.

"(c) FEDERAL SHARE.—No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the impaired driving enforcement program adopted by the State pursuant to subsection (a);

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) MAXIMUM AMOUNT OF BASIC GRANTS.—Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

"(e) ELIGIBILITY FOR BASIC GRANTS.—

"(1) GENERAL.—For purposes of this section, a State is eligible for a basic grant if such State—

"(A) provides for a program (funded at the level required under paragraph (2)) to conduct highway checkpoints for the detection and deterrence of persons who operate motor vehicles while under the influence of alcohol or a controlled substance, including the training, manpower, and equipment associated with the conduct of such checkpoints;

"(B) provides for a program (funded at the level required under paragraph (2)) to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance and in effectively prosecuting those persons, and to train personnel in the use of the equipment;

"(C) establishes an expedited driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol which requires that—

"(i) when a law enforcement officer has probable cause under State law to believe a person has committed an alcohol-related traffic offense and such person is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer shall serve such person with a written notice of suspension or revocation of the driver's license of such person and take possession of such driver's license;

"(ii) the notice of suspension or revocation referred to in clause (i) shall provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of a person for operating a motor vehicle while under the influence of alcohol and shall specify any rights of the operator under such procedures;

"(iii) the State shall provide, in the administrative procedures referred to in clause (ii), for due process of law, including the right to an administrative review of a driver's license suspension or revocation within the time period specified in clause (vi);

"(iv) after serving notice and taking possession of a driver's license in accordance with clause (i), the law enforcement officer immediately shall report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this clause;

"(v) in the case of a person who, in any 5-year period beginning after the date of enactment of this section, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer—

"(I) shall suspend the driver's license of such person for a period of not less than 90 days if such person is a first offender in such 5-year period; and

"(II) shall suspend the driver's license of such person for a period of not less than 1 year, or revoke such license, if such person is a repeat offender in such 5-year period; and

"(vi) the suspension and revocation referred to under clause (iv) shall take effect not later than 30 days after the day on which the person first received notice of the suspension or revocation in accordance with clause (ii);

"(D) requires that any person with a blood alcohol concentration equal to or greater than the following percentage when operating a motor vehicle shall be deemed to be driving while under the influence of alcohol:

"(i) 0.10 percent for each of the first 3 fiscal years in which a basic grant is received; and

"(ii) 0.08 percent for each of the last 2 fiscal years in which a basic grant is received;

"(E) enacts a statute which provides that—

"(i) any person convicted of a first violation of driving under the influence of alcohol shall receive—

"(I) a mandatory license suspension for a period of not less than 90 days; and

"(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

"(ii) any person convicted of a second violation of driving under the influence of alcohol within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

"(iii) any person convicted of a third or subsequent violation of driving under the influence of alcohol within 5 years after a prior conviction for the same offense shall—

"(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

"(II) have his or her license revoked for not less than 3 years; and

"(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of alcohol shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license; and

"(F) provides for a self-sustaining drunk driving prevention program under which a significant portion of the fines and surcharges collected from persons by reason of their operation of a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

"(2) REQUIRED FUNDING LEVELS.—The funding level for the program described in paragraph (1)(A), and for the program described in paragraph (1)(B), shall be an amount equal to or greater than—

"(A) the average level of expenditures by the State for such program in its 2 fiscal years preceding the date of enactment of this section, plus

"(B) 2.4 percent of the amount apportioned to the State for fiscal year 1989 under section 402 of this title.

"(3) WAIVER FOR REDUCED FATALITIES.—If the rate of alcohol-related fatalities (as defined in the Fatal Accident Reporting System of the National Highway Traffic Safety Administration) in a State decreases by an average of 3 percent per calendar year for the 5 consecutive calendar years prior to the fiscal year for which the State would receive a basic grant under this section, the Secretary may waive for that State the basic grant eligibility requirements of one subparagraph

among subparagraphs (A) through (F) of paragraph (1).

"(f) SUPPLEMENTAL GRANT PROGRAM.—

"(1) MANDATORY BLOOD ALCOHOL CONCENTRATION TESTING PROGRAMS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c) of this section, not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in an accident resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense.

"(2) PROGRAM FOR PREVENTING DRIVERS UNDER AGE 21 FROM OBTAINING ALCOHOLIC BEVERAGES.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for and increases its enforcement of an effective system for preventing persons under age 21 from obtaining alcoholic beverages, which may include the issuance of drivers' licenses to persons under age 21 that are easily distinguishable in appearance from drivers' licenses issued to persons 21 years of age and older.

"(3) DRUGGED DRIVING PREVENTION.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State—

"(A) provides for laws concerning drugged driving under which—

"(i) a person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance or combination of controlled substances, or any combination of alcohol and controlled substances;

"(ii) any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath, or urine for the purpose of determining the blood alcohol concentration or the presence of controlled substances in his or her body;

"(iii) the driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than 1 year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person (I) is determined, on the basis of 1 or more chemical tests, to have been under the influence of controlled substances while operating a motor vehicle, or (II) refuses to submit to such a test as proposed by the officer;

"(B) enacts a statute which provides that—

"(i) any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive—

"(I) a mandatory license suspension for a period of not less than 90 days; and

"(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

"(ii) any person convicted of a second violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

"(iii) any person convicted of a third or subsequent violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a prior conviction for the same offense shall—

"(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

"(II) have his or her license revoked for not less than 3 years; and

"(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license;

"(C) provides for an effective system, as determined by the Secretary, for—

"(i) the detection of driving under the influence of controlled substances;

"(ii) the administration of a chemical test or tests to any driver who a law enforcement officer has probable cause to believe has committed a traffic offense relating to controlled substances use; and

"(iii) in instances where such probable cause exists, the prosecution of (I) those who are determined, on the basis of 1 or more chemical tests, to have been operating a motor vehicle while under the influence of controlled substances and (II) those who refuse to submit to such a test as proposed by a law enforcement officer; and

"(D) has in effect two of the following programs:

"(i) an effective educational program, as determined by the Secretary, for the prevention of driving under the influence of controlled substances;

"(ii) an effective program, as determined by the Secretary, for training law enforcement officers to detect driving under the influence of controlled substances; and

"(iii) an effective program, as determined by the Secretary, for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

"(4) BLOOD ALCOHOL CONCENTRATION STANDARD.—For purposes of this section, a State is eligible for a supplemental grant (only for any of the first 3 fiscal years in which a basic grant is received) in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title of such State is eligible for a basic grant and in addition such State requires that any person with a blood alcohol concentration of 0.08 percent or greater when operating a motor vehicle shall be deemed to be driving while under the influence of alcohol.

"(5) UNLAWFUL OPEN CONTAINER AND CONSUMPTION OF ALCOHOL PROGRAMS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State makes unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except—

"(A) as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

"(B) as otherwise specifically allowed by such State, with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger areas.

"(6) SUSPENSION OF REGISTRATION AND RETURN OF LICENSE PLATE PROGRAM.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who—

"(A) has been convicted on more than 1 occasion of an alcohol-related traffic offense within any 5-year period after the date of enactment of this section; or

"(B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense.

A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including any family member of the convicted individual, and any co-owner of the motor vehicle, who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

"(7) SUPPLEMENTAL GRANTS AS BEING IN ADDITION TO ORDER GRANTS.—A supplemental grant under this section shall be in addition to any basic grant or any other supplemental grant received by such State.

"(g) EFFECT OF PARTICIPATION IN PROGRAMS UNDER SECTIONS 408 AND 410.—No State may receive a grant under this section for any fiscal year for which that State is a recipient of a grant under section 408 or 410 of this title.

"(h) DEFINITIONS.—As used in this section—

"(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' has the meaning such term has under section 158(c) of this title.

"(2) CONTROLLED SUBSTANCES.—The term 'controlled substances' has the meaning such term has under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

"(3) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning such term has under section 154(b) of this title.

"(4) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term 'open alcoholic beverage container' means any bottle, can, or other receptable—

"(A) which contains any amount of an alcoholic beverage; and

"(B)(i) which is open or has a broken seal, or

"(ii) the contents of which are partially removed.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to

carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $25,000,000 for the fiscal year ending September 30, 1992, and $50,000,000 per fiscal year for the fiscal years ending September 30, 1993, September 30, 1994, September 30, 1995, and September 30, 1996, respectively. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that sums authorized by this subsection shall remain available until expended.".

(c) DEADLINES FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue and publish in the Federal Register proposed regulations to implement section 405 of title 23, United States Code (as added by subsection (b) of this section), not later than December 1, 1992. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress before March 1, 1994.

(d) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by inserting immediately after the item relating to section 404 the following new item:

"405. Impaired driving enforcement program.".

PART B—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM REAUTHORIZATION

SEC. 231. SHORT TITLE.

This part may be cited as the "Motor Carrier Safety Assistance Program Reauthorization Act of 1991".

SEC. 232. MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.

(a) AMENDMENT TO TITLE 23, U.S.C.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 411. Motor carrier safety assistance program

"(a) GRANTS.—The Secretary is authorized to make grants to eligible States for the development or implementation, or both, of programs for—

"(1) the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders; and

"(2) effective enforcement of State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

A State shall be eligible to receive grants under this section only if the State has a plan approved by the Secretary under subsection (b).

"(b) STATE PLANS.—

"(1) SUBMISSION.—The Secretary shall formulate procedures for a State to submit annually a plan where the State agrees to adopt, and to assume responsibility for enforcing—

"(A) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible States rules, regulations, standards, and orders; and

"(B) State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

"(2) APPROVAL.—Subject to paragraph (3), a State plan submitted under paragraph (1) shall be approved by the Secretary if, in the Secretary's judgment, the plan is adequate to promote the objectives of this section, and the plan—

"(A) designates the State motor vehicle safety agency responsible for administering the plan;

"(B) ensures that the State motor vehicle safety agency and other State or local agencies participating in the plan have or will have the legal authority, resources, and qualified personnel necessary for administering the plan;

"(C) ensures that the State will devote adequate funds for administering the plan;

"(D) provides a right of entry and inspection to carry out the plan and provides that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Inspection Standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles;

"(E) provides that the State motor vehicle safety agency will adopt uniform reporting requirements and use uniform forms for recordkeeping, inspections, and investigations, as may be established and required by the Secretary;

"(F) provides that all required reports be submitted to the State motor vehicle safety agency and that the agency make the reports available to the Secretary, upon request;

"(G) ensures State participation in motor carrier information systems, including data bases containing data and information on drivers, vehicle inspections, driver operating compliance with applicable traffic safety laws and regulations, vehicle safety and compliance reviews, traffic accidents, and the weighing of vehicles;

"(H) ensures that commercial motor vehicle size and weight inspection activities will not diminish, the effectiveness of other safety initiatives;

"(I) gives satisfactory assurances that the State will conduct effective activities—

"(i) to remove impaired commercial motor vehicle drivers from our Nation's highways through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment, and to provide an appropriate level of training to its Motor Carrier Safety Assistance Program officers and employees on the recognition of drivers impaired by alcohol or controlled substances;

"(ii) to promote enforcement of the requirements relating to the licensing of commercial motor vehicle drivers, especially including the checking of the status of commercial driver's licenses;

"(iii) to ensure adequate enforcement of State or local traffic safety laws and regulations that affect commercial motor vehicle safety; and

"(iv) to improve enforcement of hazardous materials transportation regulations by encouraging more inspections of shipper facilities affecting highway transportation and more comprehensive inspections of the loads of commercial motor vehicles transporting hazardous materials;

"(J) gives satisfactory assurances that the State will promote—

"(i) effective interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and to provide training on appropriate strategies for carrying out such interdiction activities; and

"(ii) effective use of trained and qualified officers and employees of political subdivisions or local governments, under the supervision and direction of the State motor vehicle safety agency, in the enforcement of regulations affecting commercial motor vehicle safety and hazardous materials transportation safety; and

"(K) seeks to ensure that fines imposed and collected by the State will be reasonable and appropriate and provides that, to the maximum extent practicable, the State will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

"(3) ADDITIONAL PLAN REQUIREMENTS.—

"(A) SAFETY AND DRUG ENFORCEMENT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle safety (including commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), exclusive of Federal funds and State matching funds required to receive Federal funding, will be maintained at a level that does not fall below the estimated average level of such aggragete expenditure for the State's previous three full fiscal years. In estimating such average level, the Secretary may allow the State to exclude State expenditures for federally sponsored demonstration or pilot projects.

"(B) WEIGHT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle size and weighing activities, exclusive of Federal funds, will be maintained at a level that does not fall below the estimated average level of such aggregate expenditure for the State's previous three full fiscal years. In order to be authorized to use funds under this section to enforce commercial motor vehicle size and weight requirements, a State in its State plan submitted under this subsection shall certify that such size and weight activities will be coupled with an appropriate form of commercial motor vehicle safety inspection and will be directly related to a specific commercial motor vehicle safety problem in that State, in particular that funds for size and weight enforcement activities will be—

"(i) conducted at locations other than fixed weight facilities;

"(ii) used to measure or weigh vehicles at specific geographical locations (such as steep grades or mountainous terrains), where the weight of a vehicle can significantly affect the safe operation of that vehicle; or

"(iii) used at sea ports of entry into and exit from the United States, with a focus on intermodal shipping containers.

"(C) TRAFFIC SAFETY ENFORCEMENT.—The Secretary shall not approve a State plan that provides for funds received under this section to be used to enforce traffic safety regulations applicable to commercial motor vehicles, unless the State certifies in the plan that such traffic safety enforcement will be coupled with an appropriate form of a commercial motor vehicle safety inspection.

"(D) MAINTENANCE OF EFFORT.—The Secretary shall not approve any plan under this section which does not provide that the estimated aggregate expenditure of funds of the State and its political subdivisions, exclusive of Federal funds and State matching funds required to receive Federal funding, for commercial motor vehicle safety programs, including an estimate of expenditure for traffic enforcement activities that were coupled with commercial motor vehicle safety inspections, will be maintained at a level which does not fall below the estimated average level of such expenditures for the State's previous three full fiscal years. In estimating such average level, the Secretary may allow the State to exclude State expenditures for federally sponsored demonstration or pilot programs.

"(3) CONTINUING EVALUATION; WITHDRAWAL OF APPROVAL; JUDICIAL REVIEW.—

"(A) EVALUATION.—The Secretary shall make a continuing evaluation of the manner in which each State is carrying out its State plan, based upon reports submitted by the State motor vehicle safety agency and upon the Secretary's own inspection. A written statement of the evaluation shall be prepared every three years, the first of which shall be completed within three years after the date of enactment of this section.

"(B) WITHDRAWAL OF APPROVAL.—After providing a State with notice and an opportunity to comment, whenever the Secretary finds that a State plan is not being followed, or has become inadequate to ensure the enforcement of—

"(i) Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders, and

"(ii) State or local traffic safety laws and regulations applicable to commercial motor vehicles,

the Secretary shall notify the state that approval of the State plan is being withdrawn and shall specify the Secretary's reasons for such withdrawal. The plan shall cease to be an approved plan upon receipt by the State of the notice of withdrawal, and the Secretary shall permit the State to modify and resubmit the plan in accordance with this subsection.

"(C) JUDICIAL REVIEW.—A State may seek judicial review of notice of withdrawal of approval, pursuant to chapter 7 of title 5, United States Code, in the appropriate United States Court of Appeals. The State may retain jurisdiction in any administrative or judicial enforcement proceeding commenced before the withdrawal of the approval of the State plan, if the issues involved do not directly relate to the reasons for the withdrawal of approval.

"(4) COORDINATION OF SAFETY PLANS.—The State motor vehicle safety agency shall coordinate the plan prepared under this subsection with the highway safety plan developed under section 402 of this title. Such coordination shall include consultation with the Governor's Highway Safety Representative and representatives of affected industries to promote effective implementation of the purposes of this section.

"(c) FEDERAL SHARE OF COSTS.—By grants authorized under this section, the Secretary shall reimburse a State an amount not to exceed 80 percent of the costs incurred by that State in the development or implementation, or both, of programs as described under subsection (a). In determining such costs incurred by the State, the Secretary shall include in-kind contributions by the State.

"(d) ALLOCATIONS.—

"(1) DEDUCTION FOR ADMINISTRATION.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary may deduct, for administration of this section for that fiscal year, not to exceed 1.25 percent of the funds available for that fiscal year. At least 75 percent of the funds so deducted for administration shall be used for the training of non-Federal employees, and the development of related training materials to carry out the purposes of this section.

"(2) ALLOCATION CRITERIA.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary, after making the deduction authorized by paragraph (1), shall allocate, among the States with plans approved under subsection (b), the available funds for that fiscal year, pursuant to criteria established by the Secretary; except that the Secretary, in allocating funds available for research, development, and demonstration under subsection (h)(3) or for public education under subsection (h)(4), may designate specific eligible States among which to allocate such funds.

"(e) AVAILABILITY, RELEASE, AND REALLOCATION OF FUNDS.—Funds made available to carry out this section shall remain available for obligation by the Secretary until expended. Allocations to a State shall remain available for expenditure in that State for the fiscal year in which they are allocated and one succeeding fiscal year. Funds not expended by a State during those two fiscal years shall be released to the Secretary for reallocation. Funds made available under part A of title IV of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2301 et seq.) which, as of October 1, 1992, were not obligated shall be available for reallocation and obligation under this section.

"(f) OBLIGATION OF FUNDS.—Approval by the Secretary of a grant to a State under this section shall be deemed a contractual obligation of the United States for payment of the Federal share of the costs incurred by that State in development or implementation, or both, of programs as described under subsection (a).

"(g) PAYMENTS TO STATES.—The Secretary shall make payments to a State of costs incurred by it under this section, as reflected by vouchers submitted by the State. Payments shall not exceed the Federal share of costs incurred as of the date of the vouchers.

"(h) FUNDING.—

"(1) AVAILABILITY.—To incur obligations to carry out the purposes of this section, there shall be available to the Secretary out of the Highway Trust Fund (other than the Mass Transit Account) not to exceed $70,000,000 for fiscal year 1993, $75,000,000 for fiscal year 1994, $80,000,000 for fiscal year 1995, and $85,000,000 for fiscal year 1996.

"(2) ENFORCEMENT.—Of funds made available under this subsection for any fiscal year, not less than $7,500,000 each year shall be used to pay for traffic enforcement activities focused exclusively upon commercial motor vehicle drivers, if such activities are coupled with an appropriate type of inspection for compliance with the commercial motor vehicle safety regulations. Of the funds made available under this subsection for each of fiscal years 1993 and 1994, not less than $1,500,000 shall be used to increase enforcement of the licensing requirements of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) by Motor Carrier Safety Assistance Program officers and employees, specifically including the cost of purchasing equipment for and conducting inspections to check the curent status of licenses issued pursuant to that Act.

"(3) RESEARCH AND DEVELOPMENT.—Not less than $500,000 but not more than $2,000,000 of the funds made available under this subsection for any fiscal year shall be available for research, development, and demonstration of technologies, methodologies, analyses, or information systems designed to promote the purposes of this section and which are beneficial to all jurisdictions. Such funds shall be announced publicly and awarded competitively, whenever practicable, to any of the eligible States for up to 100 percent of the State costs, or to other persons as determined by the Secretary. The development of the model program and procedures required under section 6 of the Motor Carrier Safety Assistance Program Reauthorization Act of 1991 shall be funded under this paragraph.

"(4) PUBLIC EDUCATION.—Not less than $350,000 of the funds made available under this subsection for any fiscal year shall be allocated among specified eligible States to help educate the motoring public on how to share the road safely with commercial motor vehicles. In carrying out such education activities, the States shall consult with appropriate industry representatives.

"(i) DEFINITIONS.—As used in this section, the term—

"(1) 'commerce' means—

"(A) trade, traffic, and transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside the United States); and

"(B) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A).

"(2) 'commercial motor vehicle' means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property—

"(A) if the vehicle has a gross vehicle weight rating of 10,001 or more pounds;

"(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

"(C) if the vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) and are transported in a quantity requiring placarding under regulations issued by the Secretary under that Act.

"(3) 'controlled substance' has the meaning such term has under section 102(b) of the Controlled Substances Act (21 U.S.C. 802(b)).

"(4) 'State' means any one of the 50 States, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, or the Virgin Islands.".

(b) AMENDMENT TO SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982.—

(1) ELIGIBLE EXPENDITURES.—Section 402 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302) is amended by adding at the end the following new subsection:

"(e) After the date of enactment of this subsection, a State with a plan approved under subsection (b)(1) of this section may be reimbursed by the Secretary under this part for expenditures in enforcing State or local traffic laws or regulations designed to promote the safe operation and driving of com-

mercial motor vehicles, or for activities described under section 411(b)(2)(I) and (J) of title 23, United States Code, or both.".

(2) FUNDING.—Section 404(a)(2) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304(a)(2)) is amended—

(A) by striking "1988 and" and inserting in lieu thereof "1988,"; and

(B) by inserting immediately before the period at the end the following:", and $65,000,000 per fiscal year for fiscal year 1992".

(c) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following new item:

"411. Motor carrier safety assistance program.".

SEC. 233. NEW FORMULA FOR ALLOCATION OF MCSAP FUNDS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation by regulation shall develop an improved formula and processes for the allocation among eligible States of the funds made available under the Motor Carrier Safety Assistance Program. In conducting such a revision, the Secretary shall take into account ways to provide incentives to States that demonstrate innovative, successful, cost-efficient, or cost-effective programs to promote commercial motor vehicle safety and hazardous materials transportation safety, including traffic safety enforcement and size and weight enforcement activities that are coupled with motor carrier safety inspections; to increase compatibility of state commercial motor vehicle safety and hazardous materials transportation regulations with the Federal safety regulations; and to promote other factors intended to promote effectiveness and efficiency that theSecretary determines appropriate.

SEC. 234. VIOLATIONS OF OUT-OF-SERVICE ORDERS.

(a) FEDERAL REGULATIONS.—Section 12008 of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2707) is amended by adding at the end the following new subsection:

"(1) REGULATIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations of out-of-service orders by persons operating commercial motor vehicles.

"(2) MINIMUM REQUIREMENTS.—Regulations issued under paragraph (1) shall, at a minimum, require that—

"(A) any operator of a commercial motor vehicle who is found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 90 days and shall be subject to a civil penalty of not less than $1,000;

"(B) any operator of a commercial motor vehicle who is found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 1 year and not more than 5 years and shall be subject to a civil penalty of not less than $1,000; and

"(C) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be subject to a civil penalty of not more than $10,000.

"(3) DEADLINES.—The regulations required under paragraph (1) shall be developed pursuant to a rulemaking proceeding initiated within 60 days after the date of enactment of this subsection and shall be issued not later than 12 months after such date of enactment.".

(b) STATE REGULATIONS.—Section 12009(a)(21) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2708(a)(21)) is amended by inserting "and (g)(1)" immediately before the period at the end.

SEC. 235. INTRASTATE COMPATIBILITY.

Within 9 months after the date of enactment of this Act, the Secretary of Transportation shall issue final regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with the Federal motor carrier safety regulations under the Motor Carrier Safety Assistance Program. Such guidelines and standards shall, to the extent practicable, allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In the review of State plans and the allocation or granting of funds under section 411 of title 23, United States Code, as added by this part, the Secretary shall ensure that such guidelines and standards are applied uniformly.

SEC. 226. ENFORCEMENT OF BLOOD ALCOHOL CONCENTRATION LIMITS.

Within 3 months after the date of enactment of this Act, the Secretary of Transportation shall consult with representatives of law enforcement organizations and affected industries, and develop within 12 months after such date of enactment a model program and procedures for Motor Carrier Safety Assistance Program officers and employees to enforce the .04 percent blood alcohol concentration limit established by regulation pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

SEC. 227. FHWA POSITIONS.

To help implement the purposes of this part, the Secretary of Transportation in fiscal year 1992 shall employ and maintain thereafter two additional positions at the headquarters of the Federal Highway Administration in excess of the number of employees authorized for fiscal year 1991 for the Federal Highway Administration.

SEC. 228. DRUG FREE TRUCK STOPS.

(a) SHORT TITLE.—This section may be cited as the "Drug Free Truck Stop Act".

(b) FINDINGS.—The Congress finds that—

(1) the illegal use of controlled substances by operators of commercial motor vehicles represents an enormous threat to the safety of all motorists and their passengers on the Nation's roadways; and

(2) as indicated by numerous studies, congressional hearings, and investigations, individuals often use the areas surrounding roadside truckstops and roadside rest areas as sites for the distribution of these controlled substances to the operators of commercial motor vehicles.

(c) AMENDMENT TO CONTROLLED SUBSTANCES ACT.—

(1) IN GENERAL.—In light of the findings in subsection (b), part D of the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by inserting immediately after section 408 the following new section:

"TRANSPORTATION SAFETY OFFENSES

"SEC. 409. (a) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or safety rest area is (except as provided in subsection (b)) subject to—

"(1) twice the maximum punishment authorized by section 401(b); and

"(2) at least twice any term of supervised release authorized by section 401(b) for a first offense.

Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

"(b) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a) have become final is punishable—

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 401(b); and

"(2) at least three times any term of supervised release authorized by section 401(b) for a first offense.

"(c) In the case of any sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) shall not be eligible for parole under chapter 311 of title 18 of the United States Code until the individual has served the minimum sentence required by such subsection.

"(d) For purposes of this section—

"(1) the term 'safety rest area' has the meaning given that term in part 752 of title 23, Code of Federal Regulations, as in effect on the date of enactment of this section; and

"(2) the term 'truck stop' means any facility (including any parking lot appurtenant thereto) that has the capacity to provide fuel or service, or both, to any commercial motor vehicle as defined under section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986, operating in commerce as defined in section 12019(3) of such Act and that is located adjacent to or within 2,500 feet of the Interstate and Defense System or the Federal-Aid Primary System.".

(2) CONFORMING AMENDMENTS.—

(A) CROSSREFERENCE.—Section 401(b) of such Act (21 U.S.C. 841(b)) is amended by inserting "409," immediately before "418," each place it appears.

(B) TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting, immediately after the item relating to section 408, the following:

"Sec. 409. Transportation safety offenses."

(d) SENTENCING GUIDELINES.—

(1) PROMULGATION OF GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 (28 U.S.C. 994 note), the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 409 of the Controlled Substances Act, as added by subsection (c), shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(A) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

(B) in no event less than level 26.

(2) IMPLEMENTATION BY SENTENCING COMMISSION.—If the sentencing guidelines are amended after the date of enactment of this Act, the Sentencing Commission shall imple-

ment the instruction set forth in paragraph (1) so as to achieve a comparable result.

(3) LIMITATION.—The guidelines referred to in paragraph (2), as promulgated or amended under such paragraph, shall provide that an offense that could be subject to multiple enhancements pursuant to such paragraph is subject to not more than one such enhancement.

SEC. 239. IMPROVED BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES.

(a) RULEMAKING PROCEEDING.—Section 9107 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Public Law 100-690, subtitle B of title IX; 102 Stat. 4530) is amended—

(1) by striking "REPORT ON" in the heading;

(2) by inserting "(a) REPORT.—" immediately before "Not later than"; and

(3) by adding at the end the following new subsection:

"(b) RULEMAKING PROCEEDING.—The Secretary shall initiate a rulemaking proceeding not later than July 1, 1991. Such proceeding shall concern the need to adopt methods for improving braking performance standards for commercial motor vehicles and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to issue as a result of such proceeding regarding improved brake performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceeding required by this subsection not later than April 1, 1992.".

(b) CONFORMING AMENDMENT.—The table of contents contained in section 9101(b) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (102 Stat. 4527) is amended by striking "Report on improved" in the item relating to section 9107 and inserting in lieu thereof "Improved".

SEC. 240. COMPLIANCE REVIEW PRIORITY.

If the Secretary of Transportation identifies a pattern of violations of State or local traffic safety laws or regulations, or commercial motor vehicle safety rules, regulations, standards, or orders, among the drivers of commercial motor vehicles employed by a particular motor carrier, the Secretary or a State representative shall ensure that such motor carrier receives a high priority for a compliance review.

SEC. 241. REPORT ON TRAINING OF DRIVERS.

Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall report to Congress on the effectiveness of the efforts of the private sector to ensure adequate training of entry level drivers of commercial motor vehicles. The report shall include recommendations of the Secretary on the feasibility, desirability, and cost effectiveness of establishing mandatory Federal training requirements for all such entry level drivers. In preparing the report, the Secretary shall solicit the views of interested persons.

PART C—TRANSPORTATION EMPLOYEE TESTING

SEC. 261. SHORT TITLE.

This part may be cited as the "Omnibus Transportation Employee Testing Act of 1991".

SEC. 262. FINDINGS.

The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, trains, and trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program of abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

SEC. 263. TESTING TO ENHANCE AVIATION SAFETY.

(a) IN GENERAL.—Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"SEC. 614. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) TESTING PROGRAM.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall, in the interest of aviation safety, prescribe regulations within 12 months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(3) SUSPENSION, REVOCATION; DISQUALIFICATION; DISMISSAL.—In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, in violation of law of Federal regulation, alcohol or a controlled substance.

"(b) PROHIBITION ON SERVICE.—

"(1) PROHIBITED ACT.—It is unlawful for a person to use, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) EFFECT OF REHABILITATION.—No individual who is determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—Any such individual determined by the Administrator to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section who—

"(A) engaged in such use while on duty;

"(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (c);

"(C) following such determination refuses to undertake such a rehabilitation program; or

"(D) following such determination fails to complete such a rehabilitation program.

shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"(c) PROGRAM FOR REHABILITATION.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (a)(1) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such a program available to all of its employees in addition to those employees referred to in subsection (a)(1). The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance

in resolving problems with the use of alcohol or controlled substances.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a), the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently as a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services.

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY ADMINISTRATOR.—Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before the date of enactment of this section that govern the use of alcohol and controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(3) INTERNATIONAL OBLIGATIONS.—In prescribing regulations under this section, the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit the use, in violation of law of Federal regulation, of alcohol or a controlled substance by crew members in international civil aviation.

"(f) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Administrator.".

(b) CONFORMING AMENDMENT.—That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end the following:

"Sec. 614. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other laws and regulations.
"(f) Definition.".

SEC. 264. TESTING TO ENHANCE RAILROAD SAFETY.

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end of of following:

"(r)(1) In the interest of safety, the Secretary shall, within twelve months after the date of enactment of this subsection, issue rules, regulations, standards, and orders relating to alcohol and drug use in railroad operations. Such regulations shall establish a program which—

"(A) requires railroads to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance;

"(B) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(C) requires, as the Secretary considers appropriate disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards, or orders issued under this title.

The Secretary may also issue rules, regulations, standards, and orders, as the Secretary considers appropriate in the interest of safety, requiring railroads to conduct periodic recurring testing of railroad employees responsible for such safety sensitive functions, for use of alcohol or a controlled substance in violation of law or Federal regulation. Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards, and orders governing the use of alcohol and controlled substances in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this subsection, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(ii) establish the minimum list of controlled substances for which individual may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this subsection;

"(C) require that all laboratories involved in the controlled substances testing of any employee under this subsection shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(D) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(E) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(F) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(G) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection; and

"(H) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) The Secretary shall issue rules, regulations, standards, or orders setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of railroad identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as determined by the Secretary) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or a controlled substance. Each railroad is encouraged to make such a program available to all of its employees in addition to those employees responsible for safety sensitive functions. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this paragraph shall preclude a railroad from establishing a program under this paragraph in cooperation with any other railroad.

"(4) In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(5) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

SEC. 265. TESTING TO ENHANCE MOTOR CARRIER SAFETY

(a) AMENDMENT TO COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986.—

(1) IN GENERAL.—The Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) is amended by adding at the end the following new section:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, issue regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such operators for such use in violation of law or Federal regulation.

"(b) TESTING.—

"(1) POST-ACCIDENT TESTING.—In issuing such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) TESTING AS PART OF MEDICAL EXAMINATION.—Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laborary if the individual requests the independent test with 3 days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY SECRETARY.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by commercial motor vehicle employees issued before the date of enactment of this section.

"(3) INTERNATIONAL OBLIGATION.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(f) APPLICATION OF PENALTIES.—

"(1) EFFECT ON OTHER PENALTIES.—Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this title or any other provision of law.

"(2) DETERMINATION OF SANCTIONS.—The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, in violation of law or Federal regulation, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

(2) CONFORMING AMENDMENT.—The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(b) PILOT TEST PROGRAM.—

(1) DESIGN AND IMPLEMENTATION.—The Secretary shall design within nine months after the date of enactment of this Act, and implement within 15 months after the date of enactment of this Act, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, in violation of law of Federal regulation, alcohol or a controlled substance. The pilot test program shall be administered as part of the Motor Carrier Safety Assistance Program.

(2) SOLICITATION.—The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) SELECTION.—The Secretary shall ensure that the States selected pursuant to this subsection are representative of varying geographical and population characteristics of the Nation and that the selection takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) DURATION; ALTERNATIVE METHODOLOGIES.—The pilot program authorized by this subsection shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) REPORT.—Not later than 30 months after the date of enactment of this Act, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this subsection. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) FUNDING.—For purposes of carrying out this subsection, there shall be available to the Secretary, $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 APP. U.S.C. 2304) for fiscal year 1992.

(7) DEFINITION.—For purposes of this subsection, the term "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2716(6)).

SEC. 266. TESTING TO ENHANCE MASS TRANSPORTATION SAFETY.

(a) DEFINITIONS.—As used in this section, the term—

(1) "controlled substance" means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined has a risk to transportation safety;

(2) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, territory, district, or possession thereof, or of any foreign country; and

(3) "mass transportation" means all forms of mass transportation except those forms that the Secretary determines are covered adequately, for purposes of employee drug and alcohol testing, by either the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) or the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

(b) TESTING PROGRAMS.—

(1) IN GENERAL.—The Secretary shall, in the interest of mass transportation safety, issue regulations within 12 months after the date of enactment of this Act. Such regulations shall establish a program which requires mass transportation operations which are recipients of Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

(2) POST-ACCIDENT TESTING.—In issuing such regulations, the Secretary shall require that post-accident testing of such a mass transportation employee be conducted in the case of any accident involving mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(c) REHABILITATION PROGRAMS.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of mass transportation employees referred to in subsection (b)(1) who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude a mass transportation operation from establishing a program under this section in cooperation with any other such operation.

(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (b), the Secretary shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of the test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to mass transportation employees, or to the general public.

(2) OTHER REGULATION ISSUED BY SECRETARY.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by mass transportation employees issued before the date of enactment of this Act.

(3) INTERNATIONAL OBLIGATIONS.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

(f) PENALTIES.—

(1) DISQUALIFICATION.—As the Secretary considers appropriate, the Secretary shall require—

(A) disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) who is determined to have used or to have been impaired by alcohol while on duty; and

(B) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulations.

(2) EFFECT ON OTHER APPLICABLE PENALTIES.—Nothing in this section shall be construed to supersede any penalty applicable to a mass transportation employee under any other provision of law.

(g) INELIGIBILITY FOR FINANCIAL ASSISTANCE.—A person shall not be eligible for Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, if such person—

(1) is required, under regulations prescribed by the Secretary under this section, to establish a program of alcohol and controlled substances testing; and

(2) fails to establish such a program in accordance with such regulations.

SYMMS AMENDMENT NO. 308

Mr. SYMMS proposed an amendment to the bill S. 1204, supra, as follows:

On page 15, strike all afer "thousand" on line 19 and continuing through "thousand" on line 23; and

On page 47, strike "And Nonattainment Areas Over 50,000 Population" beginning on line 17; and strike the language beginning after "State" on line 21 and continuing through "State," on line 24.

SIMPSON (AND WALLOP) AMENDMENT NO. 309

Mr. SIMPSON (for himself and Mr. WALLOP) proposed an amendment to the bill S. 1204, supra, as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the Disadvantaged Business Enterprise program of the Federal Highway Administration (hereafter in this section referred to as the "DBE program"). The study shall include—

(1)(A) a determination of the percentage of disadvantaged business enterprise that have enrolled in the DBE program that have graduated from the DBE program after an enrollment period of 3 years;

(B) a determination of the number of disadvantaged business enterprises that have been enrolled in the DBE program for a period greater than 3 years; and

(C) a determination as to whether the graduation date any of the disadvantaged business enterprises described in subparagraph (B) should be accelerated;

(2) a determination of which State transportation programs meet the requirement under the DBE program for 10% participation by minority-owned businesses and woman-owned businesses by contracting with out of State contractors in lieu of in-State contractors;

(3)(A) a determination as to whether adjustments in the DBE program could be made with respect to—

(i) Federal or State participation in training programs; and

(ii) Meeting capital needs and bonding requirements; and

(B) with respect to subparagraph (A), in the case where adjustments could be made, recommended adjustments that would continue to encourage minority participation in the program and would improve the success rate of the disadvantaged business enterprises;

(4) recommendations for additions and revisions to criteria used to determine the performance and financial capabilities of disadvantaged business enterprises participating under the DBE program; and

(5) a determination of additional costs incurred by the Federal Highway Administration in meeting the requirement for 10% participation, as described in paragraph (2).

(b) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report on the findings of the study described in subsection (a) to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Public Works of the House of Representatives.

MURKOWSKI AMENDMENT NOS. 310 AND 311

Mr. MURKOWSKI proposed two amendments to the bill S. 1204, supra, as follows:

AMENDMENT NO. 310

On page 102, strike item (16) of section 125. ("Section 218 relating to the Alaska Highway").

AMENDMENT NO. 311

On page 38, section 112, TOLL FACILITIES, subsection (b) is amended to read as follows:

SEC. 129. TOLL FACILITIES.

(b) FEDERAL SHARE PAYABLE.—Except as provided in subsection (e), the Federal share payable for any project under this section shall not exceed 35 per centum of the cost of the project for construction of new toll facilities, provided that, for the purposes of subsection (d), the Federal share may be increased by a percentge of the remaining cost that is equal to the percentage that unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, in a state are of its total area, and shall not exceed 80 per centum of the cost of the project for rehabilitation of existing toll facilities or conversion of existing free facilities to toll facilities, provided that for the purposes of subsection (d) the Federal share may be increased in accordance with the provisions of section 120(a), as amended.

SPECTER AMENDMENT NO. 312

Mr. SPECTER proposed an amendment to the bill S. 1204, supra, as follows:

At the appropriate place, insert the following:

SEC. . BUDGETARY TREATMENT OF HIGHWAY TRUST FUND.

(a) SHORT TITLE.—This section may be cited as the "Highway Trust Fund Improvement Act of 1991".

(b) EXCLUSION OF TRUST FUND FROM DEFICIT CALCULATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the receipts and disbursements of the Highway Trust Fund allocable to the transportation-related operations of such Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) TRANSPORTATION-RELATED OPERATIONS DEFINED.—For purposes of paragraph (1), the receipts and disbursements allocable to the transportation-related operations of the Highway Trust Fund are the disbursements, and the receipts allocable to such disbursements, under—

(A) paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 (relating to expenditures from the Highway Trust Fund for the Federal-aid highway program); and

(B) paragraph (3) of section 9503(e) of such Code (relating to expenditures from the Mass Transit Account).

(c) TRUST FUND TREATMENT IN THE CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall include allocations under section 302 of this Act of the outlays and revenue totals of the Highway Trust Fund allocable to the transportation-related operations of such Trust Fund, as described in subsection (b)(2) of the Highway Trust Fund Improvement Act of 1991, but shall not include such totals in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.".

(d) EXEMPTION FROM SEQUESTRATION ORDER.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after the 28th undesignated paragraph (relating to higher education facilities) the following new undesignated paragraph:

"Highway Trust Fund (20-8102-0-7-401; 69-8019-0-7-401; 69-8020-0-7-401; 69-8099-0-7-401);".

(e) APPLICABILITY.—Subsections (b), (c), and (d), including the amendments made by such subsections, shall apply with respect to fiscal years beginning after September 30, 1991.

(f) NOT DIRECT SPENDING.—This section and the amendments made by this section shall not be construed authorizing any direct spending as defined by section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985.

REID AMENDMENT NO. 13

Mr. MOYNIHAN (for Mr. REID) proposed an amendment to the bill S. 1204, supra, as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . ROAD SEALING ON RESERVATION ROADS.

Section 204(c) of title 23, United States Code, is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend funds apportioned under this section from the Highway Trust Fund for the purpose of road sealing projects.".

DOMENICI (AND OTHERS) AMENDMENT NOS. 314 AND 315

Mr. DOMENICI (for himself, Mr. SYMMS, and Mr. CRAIG) proposed two amendments to the bill S. 1204, supra, as follows:

AMENDMENT NO. 314

S. 1204, the Surface Transportation Efficiency Act of 1991, is amended by adding the following section in the appropriate place:

SEC. . HIGHWAY CONSTRUCTION TRAINING.

Subsection (b) of section 140 of title 23, United States Code is amended by adding at the end thereof: "Notwithstanding any other provision of law, not to exceed one-fourth of

1 per centum of funds apportioned to a State for the Surface Transportation Program or the Bridge Program, may be available to carry out this subsection upon a request by the State highway department.".

AMENDMENT NO. 315

On page 151, line 10, strike out "and".

On page 151, line 15, strike out the period and insert in lieu thereof a semicolon.

On page 151, between lines 15 and 16, insert the following:

(7) the development of a technology base for Intelligent Vehicle-Highway Systems and the establishment of the capability to perform demonstration experiments, utilizing existing national laboratory capabilities where appropriate; and

(8) the facilitation of the transfer of transportation technology from national laboratories to the private sector.

GORTON (AND ADAMS) AMENDMENT NO. 316

Mr. GORTON (for himself and Mr. ADAMS) proposed an amendment to the bill S. 1204, supra, as follows:

On page 40, line 3, replace the period with a comma and insert "except that, in the case of ferry systems that serve such routes and other routes in an integrated system, such ferry may operate throughout the entire service area of the ferry system."

RIEGLE AMENDMENT NO. 317

Mr. MOYNIHAN (for Mr. RIEGLE) proposed an amendment to the bill S. 1204, supra, as follows:

Add the following new section in the appropriate place:

SEC. . EROSION CONTROL GUIDELINES.

(a) The Secretary of Transportation shall develop erosion control guidelines for States to follow in carrying out construction projects funded in whole or in part by this Act.

(b) Guidelines developed under subsection (a) shall not preempt any requirement made by or under State law if such requirement is more stringent than the guidelines.

(c) Guidelines developed under subsection (a) shall be consistent with the program of section 319 of the Clean Water Act and section 6217(g) of the Omnibus Budget Reconciliation Act of 1990.

COMPREHENSIVE URANIUM ACT

FORD AMENDMENT NO. 318

Mr. MITCHELL (for Mr. FORD) proposed an amendment to the bill (S. 210) to establish the United States Enrichment Corporation to operate the Federal uranium enrichment program on a profitable and efficient basis in order to maximize the long-term economic value to the United States, to provide assistance to the domestic uranium industry and to provide a Federal contribution for the reclamation of mill tailings generated pursuant to Federal defense contracts at active uranium and thorium processing sites; as follows:

On page 59, strike lines 8 through 10, and insert in lieu thereof the following:

"(e) Subsection 905(g)(1) of title 2, United States Code, is amended to include 'United States Enrichment Corporation' at the end thereof."

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on consent to amendments by the State of Hawaii to the Hawaiian Homes Commission Act, Senate Joint Resolutions 22 through 34.

The hearing will take place on Tuesday, July 23, 1991, at 2 p.m. in room SD-366 of the Dirksen Senate Office Building, First and C Streets, NE, Washington, DC.

For further information, please contact Allen Stayman of the committee staff at (202) 224-7865.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee will hold a full committee hearing on lender liability for environmental clean-up costs related to loan collateral. The hearing will take place on Tuesday, June 18, 1991, at 9:30 a.m., in room 428A of the Russell Senate Office Building. For further information, please call Patricia Forbes, Counsel to the Small Business Committee at 224-5175.

SPECIAL COMMITTEE ON AGING

Mr. MITCHELL. Mr. President, on behalf of Mr. Pryor I would like to announce to the public that the Senate Special Committee on Aging has scheduled a hearing to discuss the ethics of health care rationing.

The hearing will take place on Wednesday, June 19, 1991, beginning at 10 a.m. in room 628 of the Dirksen Senate Office Building.

For further information, please contact Portia Mittelman, staff director at (202) 224-5364.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 12, 1991, at 2:15 p.m. to hold a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on June 12, 1991, beginning at 9 a.m., in 485 Russell Senate Office Building, on S. 962 and S. 963, legislation to reaffirm the inherent authority of tribal governments to exercise criminal jurisdiction over all Indian people on reservation lands.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. MITCHELL. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on service-connected compensation cost-of-living adjustment, radiation compensation, and VA hospice-care legislation, on Wednesday, June 12, 1991, at 9:30 a.m., in SR-418.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Wednesday, June 12, 1991, at 10 a.m., to conduct a hearing on the lender liability issue.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Wednesday, June 12, 1991, at 2 p.m., to conduct a hearing on reauthorization of the Government Securities Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary be authorized to meet during the session of the Senate on June 12, 1991, at 2 p.m., to hold a hearing on S. 654, a bill to amend title 35, United States Code, with respect to patents on certain processes and S. 756, a bill to amend title 17, United States Code, the copyrights renewal provisions, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON THE CONSTITUTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Wednesday, June 12, 1991, at 10 a.m., to hold a hearing on the reauthorization of the Civil Rights Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INVESTIGATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations

of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Wednesday, June 12, 1991, to hold hearings on trade in conventional weapons: the international arms bazaar.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TAXATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Taxation of the Committee on Finance be authorized to meet during the session of the Senate on June 12, 1991, at 9:30 a.m., to hold a hearing on a series of miscellaneous tax bills (S. 90, S. 150, S. 267, S. 284, S. 649, and S. 913).

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON DEFICITS, DEBT MANAGEMENT, AND INTERNATIONAL DEBT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Deficits, Debt Management and International Debt of the Committee on Finance be authorized to meet during the session of the Senate on June 12, 1991, at 2 p.m., to hold a hearing on the impact of capital flight on Latin American debt and development prospects.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Wednesday, June 12, 1991, at 10 a.m., for a hearing on universal access to health care and health care cost containment.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet on Wednesday, June 12, 1991, at 2 p.m., to receive testimony from the Defense Nuclear Facilities Safety Board and the Department of Energy on safety and restart issues, in review of S. 1066, the Department of Defense authorization bill for fiscal years 1992–93.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 12, at 10 a.m. to markup fiscal year 1992 authorizations for the State Department/USIA/BIB and ACDA.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 12, at 10 a.m. to markup fiscal year 1992 foreign assistance authorization legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, June 12, 1991, at 9 a.m., to receive a briefing on the Persian Gulf war.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 12, 1991, at 2 p.m., to markup fiscal year 1992 foreign assistance authorization legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO MARY ANN BARON OF FARMERS HOME ADMINISTRATION

• Mr. FORD. Mr. President, I rise today to recognize Mary Ann Baron of Lexington who has been recognized by the Department of Agriculture for outstanding performance of her duties as Farmers Home Administration Kentucky State director.

The Superior Service Award is the second highest award bestowed by the U.S. Department of Agriculture, and was presented to 57 individuals, 19 groups, and six teams representing USDA employees from all across the Nation.

A native of Adair County, KY, Ms. Baron has been with FmHA for 10 years. She has served previously as an assistant to the Administrator here in Washington, DC, and as director of FmHA's legislative affairs and public information staff from 1984 to 1986. She has been FmHA Kentucky State director since 1987.

For the past 2 years, Kentucky has ranked near the top in national farmer program goal accomplishments. As FmHA State director, Ms. Baron was the first director to conduct farm loan reviews before approval to minimize processing errors and poor quality loans and the first to require farm loans to be reviewed in the State office. As a result, delinquency rates have dropped to 6.3 percent in 1991 from 31.4 percent in 1987.

In addition, the number of Farmers Home possessed properties resulting from borrower inability to repay, has been reduced to 15 farms today from 74 farms in 1987. This has resulted in a saving of over $600,000 for FmHA.

Ms. Baron also initiated a program of incentives to resell housing properties in the FmHA inventory. She was responsible for reducing the number of properties to 66 homes today from 471 properties in 1987.

Mr. President, such accomplishments are only a few examples of the outstanding leadership Mary Ann Baron has provided. Under her direction, FmHA offices in Kentucky have far exceeded national goals set by the agency. I would like to take this opportunity to congratulate Mary Ann and encourage her to continue her remarkable leadership.•

U.S. DEPARTMENT OF AGRICULTURE AWARDS

• Mr. DECONCINI. Mr. President, I rise today to recognize a few public servants who, in my opinion, merit our appreciation. Today the U.S. Department of Agriculture is paying tribute to these individuals for their outstanding service to the Department and their country, and I feel it is appropriate that we do so as well.

Being honored today at the annual U.S. Department of Agriculture Awards Ceremony here in Washington are the following Arizonans:

Receiving a Superior Service Award for outstanding success in providing fishing opportunities in the Phoenix area, especially for the physically challenged are Larry Forbis, group leader, and Donald A. VanDriel, Richard Uberuaga, and Todd Willard, group members of the Boulder Creek-Saguaro Lake Recreation Fisheries Improvement, Forest Service, Mesa, AZ;

Receiving a Superior Service Award for creative research in experimental biology and natural products chemistry leading to biorational, environmentally safe methods for controlling insect pests of agriculture and public health is William S. Bowers at the State Agricultural Experiment Station, Tucson, AZ;

Receiving Distinguished Service Awards for sacrificing their own lives in an attempt to save others during the Dude Wildfire, Tonto National Forest, June 26, 1990, are Joseph L. Chacon and James L. Denney of the Forest Service, Perryville, AZ;

Receiving a Superior Service Award for livesaving actions during the Dude Wildfire, Tonto National Forest, June 26, 1990, are Paul A. Gleason, group leader, and Del B. Starks, Evelyn N. Miller, Paul J. Linse, Rodney L. Goss, James P. Mattingly, Bill C. Moe, David J. Niemi, Bill McGonigle, Bob Kessler, Mike Velasco, Paul Mitchell, and Bob Scopa.

Please join with me in taking this opportunity to commend these fine individuals for their outstanding service to our country. I trust that I speak for

the entire U.S. Senate in extending our heartfelt appreciation and gratitude for their unique contributions and efforts.•

EXCERPTS FROM THE COMMITTEE REPORT ON THE FEDERAL TRANSIT ACT OF 1991

• Mr. CRANSTON. Mr. President, I ask that excerpts of the committee report on the Federal Transit Act of 1991 be printed in the CONGRESSIONAL RECORD.

The excerpts follow:

THE FEDERAL TRANSIT ACT OF 1991

Mr. Riegle, from the Committee on Banking, Housing, and Urban Affairs, submitted the following report together with Additional Views (to accompany S. 1194).

The Committee on Banking, Housing, and Urban Affairs, having considered the same, reports favorably a Committee bill (S. 1194) to amend the Urban Mass Transportation Act of 1964 and for other purposes.

LEGISLATIVE HISTORY OF THE ACT

The Committee on Banking, Housing, and Urban Affairs, to which the bill was referred, approved the bill on June 6, 1991 by voice vote and the Committee recommends that the bill as amended do pass.

The Federal Transit Act of 1991 (S. 1194) incorporates proposals developed over a period of more than six months in consultation with the Administration and leading transit authorities from across the country.

On October 26, 1990, Senators Alan Cranston and Alfonse D'Amato, respectively the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs, invited a wide variety of organizations and individuals concerned about mass transit to suggest ways in which federal policy could be improved to respond more effectively to emerging transportation needs. More than 80 responses were received from 27 states and the District of Columbia, including states in every region of the country. Responses were received from state and local transportation authorities, associations of elected officials and transportation agencies, organized labor and private industry. The recommendations were published in January 1991 as the *Report on the Federal Mass Transit Policy—Views and Recommendations* (S. Print 102-6).

On March 13, 1991, the Subcommittee on Housing and Urban Affairs convened a national symposium in Washington to review the Administration's transit legislation and other policy recommendations received by the Subcommittee. Participants in the Symposium included many of the country's top transit experts. Welcoming remarks were offered by Senators Donald Riegle, Alan Cranston, Paul Sarbanes and John Heinz. Keynote addresses were delivered by Richard Daley, Mayor of Chicago, and Kathy Whitmire, Mayor of Houston. Major papers were presented by: Alan Kiepper, APTA chairman and President of the New York City Transit Authority: Michael Meyer, Professor at Georgia Institute of Technology; William Millar, Executive Director of the Port Authority of Allegheny County; and James Cowen, General Manager of Tri-County Metropolitan Transportation. Panels of other transit industry experts reviewed and commented on the papers.

On April 17, 1991, the Subcommittee released a discussion draft entitled the *Metropolitan Transportation Initiative* that outlined a number of legislative proposals the Subcommittee had developed as a result of the national symposium and in consultation with leading transit practitioners. The draft outlined a 4-point program of refinements to current policy that would:

Give each metropolitan area responsibility to develop a long-term transportation strategy that integrates alternate modes of transportation, showing particular attention to transportation needs that affect national objectives;

Assure each metropolitan area of its fair share of federal highway and mass transit assistance up front, and enable the area to select the projects that carry out its transportation strategy most efficiently;

Create a "level playing field" for local choices of transportation projects, removing conditions that create improper biases against transit when it is the most efficient, long-term use of transportation resources; and

Open the way to improved methods of project management and financing so that state and local governments can implement their transportation strategies more quickly and cheaply.

The discussion draft was distributed widely so that recommendations for refinement could be incorporated in the Committee bill.

The Subcommittee on Housing and Urban Affairs held 8 hearings throughout the country between August 1990 and April 1991. The hearings reviewed issues to be resolved in the new transit authorization, including: the nation's changing transit needs; the role of federal, state and local governments; and the impact on transit of the Clean Air Act Amendments and the Americans with Disabilities Act. Included were four days of field hearings. On August 6 and 7, 1990, Senator Alan Cranston chaired two hearings, one in Los Angeles and one in San Jose, California, with witnesses representing state and local governments, UMTA, California DOT, environmentalist and local transit industry officials. On February 12, 1991, Senator Bob Graham chaired a roundtable hearing in Tampa, Florida with witnesses representing Florida DOT, UMTA, the Florida Transit Association, environmentalists and other groups. On April 23, 1991, Senator Dodd chaired a hearing in Bridgeport, Connecticut, with witnesses representing private transit companies, local operators and businesses. These field hearings elicited testimony on ways to mitigate congestion, improve funding, preserve our environment and enhance our nation's transportation policies through better coordination among transportation modes.

The Subcommittee also held 4 hearings in Washington. A hearing on March 15, 1991 received testimony on the Administration's transportation proposals from UMTA Administrator Brian Clymer and several transit operators responding to the Administration's proposal including: Lou Gambaccinni, Southeastern Pennsylvania Transit Authority; Wes Watson, Florida Transit Association; Frank Wilson, Bay Area Rapid Transit District; Peter Stangl, New York Metropolitan Transportation Authority; and Gordon Aoyagi, Montgomery County Division of Transit Services. A roundtable hearing on April 17, 1991 reviewed proposals in the Subcommittee's discussion draft *"Metropolitan Transportation Initiative"*—including a wide range of witnesses including academics to DOT officials and national environmental groups as well as rural and urban transit operators. A hearing on April 18, 1991 received testimony from panels of witnesses regarding rural transit, transit needs of elderly persons and persons with disabilities, and the transit implications of the Clean Air Act amendments. A hearing on April 24, 1991 provided a detailed discussion of ways to improve capital investment in transit, with participants representing labor and metropolitan transportation systems.

Subcommittee staff held on-site policy discussions with transit operators—including operators of rail, bus, and paratransit systems—in New York, Philadelphia, Baltimore, Detroit, Las Vegas, the San Francisco Bay Area, Sacramento, Los Angeles, San Diego, Honolulu and several other communities. Staff reviewed provisions of the Committee bill on numerous other occasions with representatives of transit systems with a wide range of operating characteristics from many regions of the country.

The Committee bill incorporates the best suggestions from all of these hearings and discussions.

NEED FOR THE LEGISLATION

Twenty five years ago, when Congress first acted to strengthen public transit, the consequences of federal neglect had become ominous. Public transit systems were failing across the country. Transit facilities were in disrepair and inefficient. Fares were skyrocketing, ridership was plummeting.

In the intervening years, mass transit has become an increasingly vital source of mobility for communities of all sizes—based on a strong partnership between government and the private sector. Mass transit now serves millions of Americans with a wide array of services—from the heavy rail transit that is expanding in our largest cities, to bus service in our medium-sized cities, to van-based paratransit services that meet special needs in smaller communities.

Despite past improvements, the unmet need for modern, efficient public transit is even greater today than it was 25 years ago. The Surface Transportation Efficiency Act of 1991 now before Congress provides an important opportunity to begin closing that gap. The Committee bill is intended to be a key title in the legislation, fitting well with the work of the Committee on Environment and Public Works and other committees of the Senate.

For the first time in thirty-five years, Congress is able to consider the future of federal transportation policy without the cost burdens of completing the interstate highway system. The nation now has that vital asset. It needs to be preserved.

The interstate commitment was based on the Eisenhower era dream that we could achieve nationwide mobility by building bigger and better roads to accommodate more and faster motor vehicles. We now also know the dream of thirty-five years ago can carry us only so far—and then it creates severe problems. In our major economic and population centers, more highways do not bring mobility—new highways tend to generate new congestion.

As Jessica Mathews, of the World Resource Council wrote. "We now know that new roads generate more traffic than they serve. . . . We now know that we cannot build roads fast enough to meet demand under a highway-only policy." [The Washington Post, May 12, 1991]

The costs of highway construction are far greater than the $129 billion in direct spending on the interstate system.

We pay the cost through increasingly intolerable traffic congestion in the nation. Main roads are choked to capacity in peak hours, and America's workforce spends millions of hours each day in traffic gridlock.

The General Accounting Office (GAO) has noted that congestion costs Americans annually (GAO, May, 1991). According to the Urban Mass Transportation Administration, if just one out of every five single drivers switches to a higher occupancy mode, congestion costs would be reduced by 60%.

We pay the cost through rising and atrocious air pollution in America. Some 112 million Americans live in areas where the air quality standard is exceeded. Two recent studies by the University of Southern California made the shocking finding that "children raised in the South Coast Air Basin already had 10 to 15 percent less lung function by the time they were in the second grade than youngsters growing up in relatively smog-free Houston." [LA Times, April 29, 1991]

We pay the cost through over-reliance on foreign oil. The Department of Energy reported that in the first 11 months of 1989, the cost of imported energy—primarily oil—represented 38.5% of the $102.4 billion trade deficit. Although attempts to increase fuel economy must continue, achieving real reductions in oil dependency will require alternatives to a one-person-per-vehicle transportation system. Each additional person who chooses to commute by car requires an extra 200 gallons of gasoline per year. Increasing transit ridership by 10% in the five largest metro areas would save 85 million gallons of gas a year. A bus with as few as seven passengers is more fuel efficient than the average commuter automobile.

These problems will only worsen if we continue current transportation policies. Although some states may not yet have a highway-related crisis, many do, and the trends are ominous throughout the country.

Continuing with a narrow-viewed highway policy will lead the country up a blind alley. The Senate must find a better path. Improved and expanded public transit must be a larger part of the country's transportation.

The Committee believes that this transportation bill can move the country toward a more balanced, integrated and efficient transportation system. It can help link highways, mass transit, ports, railroads and airlines. It can help move goods more efficiently within urban centers and to distant markets. It can help people move quickly to and from home, jobs and other destinations.

OVERVIEW OF THE COMMITTEE BILL

The Committee bill would make a number of important changes in transportation policy.

First, the bill would provide comparable funding increases for highways and public Transit. Over the past decade, federal aid to public transit was cut from $4.6 billion in fiscal 1981 to $3.2 billion today. After inflation, that's a cut of 50 percent.

The Committee is concerned that the Administration's transportation proposal would expand highway spending by 39 percent but would hold funding for public transit essentially flat. The Administration bill suggests a token increase in the last year of the authorization, but after inflation, mass transit would continue to be cut for five more years.

The Committee has also not accepted the President's scheme for running down the trust fund balance over a five or six year period. The Committee believes it would be unwise to take an approach that could throw transit funding into grave uncertainty within a few years. The Committee bill will provide transit with sources of funding that can be sustained on into the future.

The Committee bill would provide real growth in transit funding—equal to the increase provided for highways. Both the discretionary grant program and the formula grant programs would be funded partly out of the transit account of the highway trust fund and partly out of general funds. This would dramatically increase the payments that many states would receive from the mass transit account.

Second, the bill would open up the highway trust fund so that highway and transit dollars can be used to improve mobility in the most efficient way—whether that is with roadways, transit, or some multi-modal solution.

The Committee recognizes that, in some areas, new roads may be the answer. But in many of the country's most populous areas, mobility would be improved much more efficiently through investment in better mass transit—or perhaps through ramp-metering, HOV lanes, or car pool programs. Metropolitan areas would be able to choose the best use of scarce federal transportation assistance.

The Committee shares the concerns of many who are uneasy about funding flexibility because, historically, the highway interests have had such dominant power in many states. But the Committee believes its bill provides flexibility where it is most needed—in those metropolitan areas that are struggling with severe problems of congestion and air pollution. And the bill does so with adequate protection so that funds will not be drained from basic transit needs.

Third, the Committee bill would help the country get a bigger "bang" of transportation service for every transit buck that *is* made available. One section of the bill would improve full funding contracts to stretch available funding over more projects and enable transit operators to finance and manage long-term projects more efficiently. Another section of the bill would permit operators to enter into long-term purchasing agreements for buses and rail cars to provide fleets of compatible vehicles that can be operated and maintained more efficiently. Yet another section of the bill would provide new authority that is needed for "turnkey" procurement of high technology transit systems.

Fourth, the bill would address the differing needs of mass transit systems across the country. Some cities have a great need to build new transit systems—for them, the bill would improve capital project management. Other cities have mature transit systems and need assistance in operating, modernizing and extending their facilities—for them, rail modernization would be distributed on a more predictable formula. All cities need adequate bus service—for them, funding for bus procurement would be increased. The bill reflects the needs of smaller communities and rural areas—funding for rural transit would be more than doubled.

Fifth, the bill would give priority to maintenance of our existing infrastructure. The Senate's highway title provides protection of the interstate investment and maintenance of our bridges. The public transportation title will also provide for adequate maintenance of our public transportation services.

Sixth, the Committee bill would give metropolitan areas responsibility to develop comprehensive strategies for meeting their long term transportation needs. Integrated transportation planning is especially important in areas with severe air pollution and traffic congestion. But the Committee believes that will only work if metropolitan areas are allocated a fair share of federal transportation aid and are given authority to select projects for new or expanded capacity. Projects will be approved through a comprehensive *local* decision making process in which states and other interested parties participate. This authority to approve capacity expansion projects need not be given to every metropolitan area, but the bill will give that authority where it is needed: in those areas that are trying to carry out a comprehensive strategy for reducing severe congestion and air pollution.

Seventh, the bill would remove the bias against the choice of the most efficient use of federal transportation funds. Federal policy now stacks the deck heavily against public transit. Under the Committee bill, metropolitan areas would have a "level playing field" when they choose among transportation modes. Application procedures will be more standardized.

Extra transit requirements for alternatives analysis and some other application steps would be waived if Section 3 funds would be less than one-third of a project's cost—and federal highway funds could be used to reduce funds required under Section 3.

State and local match requirements would be more uniform across alternative transportation solutions. The bill would apply the highway match requirements to public transit projects—that is a 75/25 match for new capacity; and an 80/20 match for maintenance activities and more efficient use of existing systems.

Finally, the bill would reinforce the Clean Air Act, the Americans with Disabilities Act and other improtant national objectives. The Committee bill would prevent some provisions of the Clean Air Act from having the unintended effect of diverting federal transportation assistance away from areas of the country that have the greatest congestion. The bill would also encourage research, testing, and technical assistance in implementing low-cost transportation demand management strategies that can improve air quality while reducing traffic congestion. And the bill would prevent some requirements of the Americans with Disabilities Act from having the unintended effect of weakening transit systems that are already financially strained.

COMMITTEE DELIBERATIONS

The Committee bill in reporting with amendments to "The Federal Transit Act of 1991" (S. 1194), introduced by Senators Alan Cranston, Donald Riegle and Alan Dixon on May 24, 1991. The Committee bill incorporates proposals in the Administration's "Surface Transportation Assistance Act of 1991" (S. 610). An it includes provisions of "The Federal Mass Transportation Act of 1991" (S. 1160), introduced on May 23, 1991 by Senators Alfonse D'Amato and Arlen Specter.

The Senate Committee on Banking, Housing and Urban Affairs held a mark-up of the bill on June 6, 1991. The Committee adopted by voice vote a package amendment number 17 offered by Senator Cranston. The package included 12 amendments suggested by Senators Donald Riegle, Paul Sarbanes, Alan Dixon, and Bob Graham, as well as by the Administration and others. The Committee adopted by voice vote amendment number 1 offered by Senator Connie Mack to change the census data used in distribution formulas from 10 years to four years by voice vote. The Committee also adopted by voice vote amendment number 5 by Senator Bob Graham to have 1990 census figures applied to fiscal year 1992 formula allocations. The Committee then ordered the bill favorably reported by unanimous voice vote.

EXPLANATION OF THE COMMITTEE BILL

Title and Agency Name Change: The Committee bill would amend the name of the underlying law from the "Urban Mass Transportation Act of 1964" to the "Federal Transit Act".

The Committee bill would amend the name of the Urban Mass Transportation Administration to the "Federal Transit Administration".

Findings and Purposes: The Committee bill would add a new finding that significant improvement in public transportation is necessary to achieve national goals for improved air quality, energy conservation, international competitiveness and mobility for the elderly, persons with disabilities and the economically disadvantaged in urban and rural areas of the country.

The Committee bill would also adopt the objective of providing State and local governments with the financial resources to help implement national goals related to improved air quality, international competitiveness and mobility for the elderly, persons with disabilities and economically disadvantaged persons.

Authorizations: Federal transit funding has been cut from $4.6 billion in 1981 to $3.2 billion today. After inflation, that is a cut of more than 50 percent. During this period, the disparity between transit and highway funding has grown considerably. In 1981, the federal highway program was twice the size of the federal transit program. Today, it is five times as large. The Committee noted that the Administration's proposal would increase highway funding by nearly 40 percent over the next five years but would provide virtually flat funding for transit—which would mean a continued reduction in real terms. The Committee strongly believes that these funding inequities between highway and transit should not be further exacerbated.

The Committee bill would authorize slightly more than $21 billion over the 5-year period covered by the bill. Authorization levels increase at the overall rate proposed by the Administration for total transportation funding—an average annual increase of about 7 percent. Thus, transit programs would receive funding increases comparable to those proposed for highway programs.

UMTA Administrator Brian Clymer, in testimony before the Senate Subcommittee on Housing and Urban Affairs, estimated that the transit need justifies a $7.7 billion annual program. Other estimates, by the American Public Transit Association, indicate that an annual federal transit investment of $11 billion would be necessary adequately to maintain and expand existing service, meet the growing demand for new service and fulfill the requirements of the Americans with Disabilities Act and the Clean Air Act Amendments of 1990.

The Committee recognizes that the authorization levels proposed in this bill will not fulfill the need for transit investment. The recommended levels do, however, reflect a reasonable expectation of the availability of general funds and a responsible plan for spending balances in the transit trust fund. The Committee has also worked to improve programs, throughout the bill, to maximize the benefit of funds that are made available.

The Committee bill proposes two significant changes to spending from the Mass Transit Account of the Highway Trust Fund.

First, the Committee bill would restructure funding sources to support all transit programs with a blend of funding from the trust fund and general funds. Under current law, the section 3 new starts, rail modernization, and bus discretionary programs, the section 16(b)(2) elderly and handicapped transit program and the section 8 planning program are funded from the mass transit trust fund. Sections 9 and 18 formula programs are funded primarily from general revenues. Historically, the formula programs funded from general revenues have experienced larger cuts in the appropriations process than have programs funded from the trust fund. The bill would revise this practice and use the Transit Accounts of the Highway Trust Fund to finance about 60% of the formula grant programs. This change benefits most states by increasing the amounts they receive from the Transit Account and placing formula and discretionary grants under equal budgetary pressures in the appropriations process.

Second, the Committee bill would substantially increase the amount of overall transit funding drawn on the Transit Account of the Trust Fund. As of January, 1991, the mass transit account of the trust fund had an unexpended balance of $7.156 billion and an uncommitted cash balance of $3.57 billion. The Administration's bill proposed shifting funding for mass transit programs entirely to the trust fund. Under that scenario, only $425 million in uncommitted balances would remain in the trust fund at the end of this authorization bill. Congress would then have to scale back mass transit assistance sharply, increase fuel taxes or move mass transit back as a claim on general revenues.

The Committee bill would keep payments from the Trust Fund at a level that permits stable, long-term program operation without depleting the Transit Account. A larger portion of the overall transit program would be funded from the trust fund; the current 43% of the transit program funded from the trust fund would be increased to 53% in fiscal year 1992, and rise to 57% in fiscal year 1996. But, spending from the trust fund would not exceed revenues received from taxes and interest accruing to the trust fund in each year.

MASS TRANSIT ACT—COMMITTEE PRINT

[In thousands of dollars]

	Fiscal year 1991	Administration 1992	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995	Fiscal year 1996
Sources of funds:							
Soc. 3 capital grants:							
Trust fund	1,200,000	NA	535,000	580,000	680,000	750,000	835,000
General funds	213,000	0	775,000	780,000	798,000	828,900	850,400
Subtotal sec. 3	1,413,100	NA	1,310,000	1,360,000	1,478,000	1,578,900	1,685,400
Formula grants and other							
Trust fund:							
Contract	200,000	NA	1,070,500	1,220,000	1,300,000	1,450,000	1,565,000
Appropriation	0	0	450,000	525,000	550,000	400,000	300,000
General funds	1,581,483	0	990,000	862,000	801,000	981,500	1,160,000
Subtotal formula and other	1,781,483	NA	2,510,500	2,607,000	2,651,000	2,831,500	3,025,000
All grants:							
Trust fund:							
Contract	1,400,000	350,000	1,605,500	1,800,000	1,980,000	2,200,000	2,400,000
Appropriation	0	2,899,499	450,000	525,000	550,000	400,000	300,000
General funds	1,794,583	0	1,765,000	1,642,000	1,599,600	1,810,400	2,010,400
Total FTA funds	3,194,583	3,249,499	3,820,500	3,967,000	4,129,600	4,410,400	4,710,400
Uses of funds:							
Sec. 3 capital grants:							
Rail modernization	455,000	(1)	524,000	544,000	591,440	631,560	674,160
New starts	440,000	300,000	524,000	544,000	591,440	631,560	674,160
Bus	220,000	(1)	262,000	272,000	295,720	315,780	337,080
ADA and clean air	0	50,000	0	0	0	0	0
Subtotal sec. 3	1,115,000	350,000	1,310,000	1,360,000	1,478,600	1,578,900	1,685,400
Formula grants:							
Sec. 9 and 9B:							
Rail modernization	(2)	600,000	(2)	(2)	(2)	(2)	(2)
Bus	1,156,427	1,446,106	1,330,032	1,382,219	1,507,265	1,610,313	1,720,820
Fixed guideway	578,214	419,802	665,016	691,109	753,633	805,157	860,410
Subtotal sec. 9 and 9B	1,734,641	2,465,908	1,995,048	2,073,328	2,260,898	2,415,470	2,581,230
Sec. 16(b) elderly/handicapped	35,000	45,000	58,508	60,705	63,144	67,356	71,856
Sec. 18 rural	65,359	89,000	127,343	132,340	144,313	154,179	164,759
Subtotal formula	1,835,000	2,599,908	2,180,899	2,266,374	2,468,355	2,637,005	2,817,845

MASS TRANSIT ACT—COMMITTEE PRINT—Continued

[In thousands of dollars]

	Fiscal year 1991	Administration 1992	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995	Fiscal year 1996
Planning and research:							
MPO's	45,000	(3)	52,637	54,635	56,830	60,620	64,670
State program		62,151	11,702	12,141	12,629	13,471	14,371
Transit cooperative		(3)	11,702	12,141	12,629	13,471	14,371
National program	8,000	31,075	35,105	36,423	37,886	40,414	43,114
University centers	5,000	6,000	5,000	5,000	5,000	5,000	5,000
Rural: RTAP	5,000	(4)	5,851	6,071	6,314	6,736	7,186
Administrative expenses	32,583	40,365	47,586	49,373	51,357	54,783	58,443
Interstate transfer	149,000	160,000	160,000	164,843	0	0	0
Total FTA Program	3,194,583	3,249,499	3,820,500	3,967,000	4,129,600	4,410,400	4,710,400

[1] Section 9.
[2] Section 3.
[3] State.
[4] TP&R.

Improving Capital Investment in Transit

Investment in needed transit. A principal objective of the Committee bill is to accelerate efforts to improve transit systems with a national commitment that corresponds to the urgent challenge to increase mobility, clean the air and reduce reliance on imported oil.

Federal support for transit throughout most of the past decade has fallen far short of the need. Federal transit assistance was cut by 50 percent in real terms. Opponents of federal transit assistance have argued that transit should be a state and local responsibility and that the federal interest can be limited to interstate and interregional transportation. The Committee finds that to be specious reasoning. Since interstate highways attract heavy commuter traffic in our major economic and population centers, the ability of federal highways to offer interstate mobility is profoundly degraded when we fail to provide adequate and balanced transportation systems using all modes of transportation, including transit, to relieve congestion. Achieving that integrated transportation system must be the shared responsibility of all levels of government.

Breakdown of existing procedures. Current federal transit procedures are inadequate to support the investment that will be needed over the next decade. The system is breaking down. Problems with the Section 3 new start program are symptomatic of obstacles to sound rail modernization and bus investment as well.

Section 3 new start applications now in preparation lay claim to current funding levels for the next quarter century. The Administration itself supports funding for twelve projects that have already completed alternatives analysis and are in final stages of development. Those projects alone will require total federal assistance of $2.53 billion, or three-quarters of a billion more than the Administration has requested for the next five years. The Administration estimates that forty projects in the new starts pipeline could require federal assistance in excess of $5 billion. Another $13 billion in projects are currently in systems planning.

In recent years, UMTA has tried to cope by both creating administrative hurdles to delay project approval and chopping large projects into small segments that can be accommodated within available funding levels. Both of these mechanisms hinder the expansion of transit and run up long-term project costs. Time is running out on delaying tactics as an increasing number of important transit projects approach the time when construction can begin.

Faced with these obstacles, cities struggling with air pollution and congestion have sought with growing desperation to expedite federal project approval. More and more seek to circumvent UMTA procedures by getting advance earmarking of funds by Congress. At best that can be a solution for only a few projects—not everyone can jump to the head of the line. And advance earmarking works against the effective use of transit funds provided by Congress. Scarce transit dollars that are set aside for one project often sit idle for years while the project clears the hurdles for final approval. In the meantime, funds are denied to meritorious projects that are ready to begin construction.

Important new management tools. The Committee expects the Federal Transit Administration forcefully to resist project proposals that are unsound public investments. But the Committee intends that, during this authorization cycle, the Federal Transit Administration will become a more effective partner for transit and will accelerate sound transit projects efficiently through to completion.

The Committee bill provides the Federal Transit Administration with several important new tools to fulfill this responsibility. The bill has several provisions to improve project management and financing so that transit operators can more quickly and cheaply implement capital investment called for in their transportation strategies. These reforms are intended to benefit all major transit investment, including new start, rail extension, rail modernization and bus investment. Procedural reforms in the Committee bill conform with federal budgetary controls and will make more effective use of scarce federal transit assistance.

In general, the Committee bill enables the Federal Transit Administration and transit operators better to manage the long-term commitments that are required for major transit investment. Several mechanisms are provided or improved as noted in the following sections.

Full Funding Contracts. UMTA administratively has developed full funding grant agreements or full funding contracts (FFCs) with the principal objective of limiting federal obligations with regard to major projects. Under current FFC practice, UMTA and a grantee enter into a contract that (1) obligates a specific amount of federal assistance, often for the first year only, and (2) includes a commitment to obligate additional amounts contingent upon the availability of funds in future years. The contract commits the grantee to complete a project segment within a specified time period, for a specified cost. The grantee is required to complete the project with the grantee's own funds if federal appropriations are not available. FFCs are a useful tool, but they are directed onesidely to limitation of federal expenditures and are not well designed to enable grantees to manage long-term projects most efficiently. They force grantees to horde federal transit funds both in anticipation of and after receipt of an FFC. FFCs are limited to the remaining authorization in the most recent authorization bill, so they become less and less useful toward the end of an authorization period.

The Committee bill would authorize full funding contracts in statue, as requested by the Administration, with important refinements. The Committee bill would make it clear that the Secretary is responsible for structuring an FFC not only to establish the terms and conditions of federal financial participation in a project and the maximum amounts of federal financial assistance for the project, but also to facilitate efficient and expeditious management of an approved project through to completion in accordance with federal law. The Committee intends that the FTA become a full partner with the grantee in providing improved transit services.

A central objective of the Committee bill is to enable FTA in the future to enter into the longer-term commitments that are needed for grantees to manage major capital investment projects in a more businesslike way than is possible under current federal procedures. Current practice tends to limit federal approval to the smallest feasible project segment. The Committee bill would enable a grantee to get approval for orderly implementation of an optimum economic project segment, when that would in the long run be more cost-effective and provide significant benefits of congestion relief and air pollution control. In no event could federal approval for a fixed-guideway project be given for less than an operable segment.

Under the Committee bill, as under existing law, any federal funding obligation would be limited to amounts that are provided in advance in law. The Committee fully expects and intends the continuation of current practice under which such amounts are provided in advance in appropriations acts, either as obligational limits on contract authority or as appropriations from the Highway Trust Fund or general funds. The Committee bill explicitly provides for that limitation, and nothing in the Committee bill has the effect of permitting obligation of

budget authority in excess of that limitation.

Existing law recognizes that orderly development and implementation of major capital investment requires federal commitments in addition to the binding obligation of funds. These commitments have been provided in various forms through letters of intent. The administration has also increasingly relied on full funding contracts, sometimes called "full funding grant agreements", to formalize the necessary commitments, which under current practice may include a commitment to obligate funds in future years subject only to the availability of funds in those years. The Committee agrees with the Administration that the statute should explicitly authorize full funding contracts along with letters of intent.

The Committee bill makes it clear that (1) full funding contracts can obligate specific amounts of budget authority and (2) they may also make conditional commitments to obligate specified additional amounts of budget authority that will be needed in the future to complete the approved project covered by the full funding contract. For example, if a fully approved project is to take six years to complete, the full funding contract could obligate budget authority sufficient for, say, the first three years and include a contingent commitment to obligate in year three an additional amount needed to complete the project.

The Committee notes that contingent commitments explicity authorized in the bill would not be different in kind from the contingent commitments that have been provided under administrative practice in full funding grant agreement. The importance difference is that the Committee bill would (1) permit the contingent commitments to cover a significantly longer period of time to accommodate more effective managment of capital projects within annual budgetary constraints and (2) use a limitation on the volume of outstanding contingent commitments that more reasonably reflects Congressional intent that sound transit projects be developed in a stable, ongoing review process and carried out expeditiously.

Under the Committee bill, federal reimbursement could be made over a longer period than is needed for project construction, if that is needed to complete a large project efficiently. These conditional commitments would be subject only to the future availability of budget authority provided in law. That is, if a future Congress has not provided sufficient budget authority for projects of the type covered by the letter of intent, the federal government would not have a legal obligation to provide the funding. Any contingent commitment, however, would be fulfilled so long as the budget authority has been provided in advance of that future date.

This provision of the Committee bill would provide FTA with a project management tool similar to the one provided to FAA in the Airport Improvement Act of 1987. That act authorizes FAA to support large, multi-year airport projects that could not be accommodated within funding levels available annually. FAA letters of intent now allow airport authorities to begin work in a timely and efficient manner using funds provided locally or borrowed in the capital markets. The letter of intent makes a contingent commitment to provide federal reimbursement over several years. This system gives the FAA the ability to manage a volume of large projects in a sound manner. The FAA letter of intent does not create a legal obligation of federal funding. Instead, it formally states FAA's intention to fund a specific project under specified conditions in the future so long as funds are appropriated and available for the relevant activity.

The letters set out a proposed schedule of federal expenditures based on FAA's estimate of funding that is reasonably likely to be made available in the future. The Committee believes that such a mechanism is even more needed for transit projects, which often require even longer periods of time and larger amounts of financing for implementation.

The Committee is aware that FAA policy limits projected reimbursements, under all outstanding letters of intent, in any given year to 50 percent of funding that is reasonably estimated to be made available in that year. This limitation is used so that in future years the administration would not find its flexibility unduly constrained by contingent commitments made in prior years.

The Committee bill provides that project costs eligible for reimbursement under a full funding contract would include any interest or other financing costs of efficiently carrying out the project or a portion of the project. The bill specifies that eligible financing costs could not exceed the costs of the most favorable financing terms reasonably available for the project at the time of borrowing. This limitation is intended to promote prudent financial management decisionmaking.

The Committee intends that the Secretary administer these provisions, together with other project management reforms provided in the bill, in a way that greatly reduces the need for operators to seek advance earmarking of funds for sound transit projects.

Early systems work agreements. The Committee bill provides for early systems work agreements as an additional mechanism through which FTA could permit a grantee to proceed with procurement of land, long-lead-time system elements for which specifications are determined, and other activities that are appropriate to avoid delays or other inefficiencies in project management that would increase overall project costs.

The Secretary could only enter into an early systems work agreement if a record of decision pursuant to the National Environmental Policy Act of 1969 (NEPA) has been issued on the project and the Secretary determines there is reason to believe (1) a full funding contract for the project will be entered into and (2) the terms of the early systems work agreement will promote ultimate completion of the project more rapidly and at less cost.

An early systems work agreement would obligate an amount of available budget authority and would provide for reimbursement of preliminary costs of project implementation specified in the agreement. Such costs could include land acquisition, timely procurement of system elements for which specifications are determined, and other activities that the Secretary determines to be appropriate to facilitate efficient, long-term project management. The Secretary would establish in the agreement the effective date after which local costs are eligible for federal reimbursement, and such date could be prior to compliance with NEPA so long as local costs incurred otherwise meet revelant federal requirements.

Any interest or other financing costs of carrying out the early systems work agreement efficiently would be considered eligible project costs, except that eligible financing costs could not exceed costs of the most favorable financing terms reasonably available for the project at the time of borrowing. If an applicant failed to implement the project for reasons within the applicant's control, the applicant would be required to repay all federal payments made under the early systems work agreement plus reasonable interest and penalty charges as specified in the agreement.

The Committee intends that these conditions will make the early systems work agreements a valuable tool for reducing the capital costs of transit in many circumstances; but will ensure that these agreements are used only in projects that can reasonably be expected to proceed.

Limitation on letters of intent and contingent commitments. The Committee bill ensures that the volume and content of contingent committees in full funding contracts and early systems work agreements are consistent with clearly expressed Congressional policy. It does so it a way that is a significant improvement over current practice.

Existing statute limits the total estimated amount of future Federal obligations covered by all outstanding letters of intent to the remaining authorization for the relevant activity under section 3, less an amount the Secretary estimates to be needed for other grants. This limitation rests on the assumption that Congressional support for transit is expressed by the total amount authorized in the most recent transit authorization bill, which typically includes 5 years of authorizations.

This measure of Congressional intent has had unintended and preverse consequences that undermine efficient development and implementation of transit service that Congress clearly does support. Under current practice, the limitation equals the total 5-year authorization at the start of the first year; then, with each passing year, the limitation sharply declines until it hits zero later in the authorization period. As a result, a project under consideration in the first year or two of an authorization cycle can easily be accommodated. But sound project proposals coming to fruition in the final two or three years of an authorization cycle, cannot be given equal treatment. Toward the end of an authorization cycle, meritorious projects are often forced to wait for months until a new authorization bill is passed and the window of opportunity springs open once again. Federal transit officials now operate as if Congress is likely to terminate federal transit assistance abruptly at the end of the authorization cycle, although Congress has never indicated an intention to do so. To the contrary, Congress has repeatedly acted in support of transit. The difficulty and cost of local response to urgent tranportation needs are greatly increased by federal programs that arbitarily go through start and stop cycles.

The Committee bill recognizes that Congressional support for transit is expressed not just through reauthorization of transit programs. Important evidence that Congressional intent is to provide stable federal support for capital investment in public transit is the creation of the special Mass Transit Account within the Highway Trust Fund in 1982, financed with dedicated gas tax revenues. As recently as 1990, in the Omnibus Budget Reconciliation Act, Congress increased tax receipts into the Transit Account.

The Committee bill therefore would limit the value of outstanding FTA letters of intent and contingent commitments in full funding contracts to (1) the total amount authorized for Section 3 or (2) 50 percent of the

uncommitted cash balance remaining in the Mass Transit Account of the Highway Trust Fund, whichever is greater. The uncommitted cash balance includes the amounts received in the Mass Transit Account from taxes and interest earned in excess of amounts that have previously been obligated or committed. The total amounts covered in letters of intent, full funding contracts or early systems work agreements for a given use (i.e. new starts, rail modernization or bus) would be subject to the total of authorizations for such use, whether provided as contract authority or as authorizations of appropriations. Under this limitation, even in the extremely unlikely case in which a future Congress terminates subsequent transit assistance, Congress would have provided more than enough in the Mass Transit Account to cover all FTA commitments outstanding at that time.

This change in limitation would enable FTA to consider and approve projects much more consistently over time. As an illustration, under current practice, authorization levels in the Committee bill would permit FTA, right after enactment, to issue outstanding letters of intent and full funding contracts for new start projects up to a maximum of almost $3 billion, the total of the 5-year authorization for Section 3 new starts, less what is estimated to be needed for other grants. Over the course of the authorization cycle, the maximum volume cap on project commitments would fall each year to about $2.4 billion by fiscal year 1993, to $1.9 billion by fiscal 1994, to $1.3 billion by the end of fiscal 1995, to $1 billion by fiscal 1996, and to zero sometime during the last year of the authorization. In practice, these illustrative figures would be significantly affected by the actual pattern of FTA commitments.

The following figures illustrating the intended effect of the bill, show that FTA would work under a more stable ceiling as it considers projects that are ready for approval. At the Committee's request, the Administration projected uncommitteed cash balances remaining in the Mass Transit Account for future fiscal year as a result of the recommended authorization levels as follows: $4.1 billion at the end of fiscal year 1992, $4.5 billion at the end of fiscal year 1993, $4.8 billion at the end of fiscal year 1994, $4.9 billion at the end of fiscal year 1995, and $4.5 billion at the end of fiscal year 1996. The Committee bill's limitation on letters of intent and contingent commitments (at the higher of the remaining authorization or 50 percent of the transit account's uncommitted cash balance) would be roughly as follows: starting at almost $3 billion as under current law, and declining as under current law to $2.4 billion by fiscal 1993, but then leveling out at about $2.5 billion in fiscal 1994, $2.5 billion in fiscal 1995, and $2.3 billion in fiscal 1996. Note that the Committee bill does *not* propose that the remaining uncommitted cash balance be allocated among different section 3 programs (ie new starts, rail modernization and bus). The full amount available within the cap would be available for whatever project is under consideration. even more consistent ceiling throughout the authorization cycle. However, the Committee chose at this point the more conservative level of 50 percent.

Advance Construction Contracts. The Committee bill would amend the existing statute to avoid problems now inherent in advance construction contracts, which inappropriately force grantees to bet on inflation. Advance construction contracts (ACCs) were authorized in the 1987 Surface Transportation Act to permit grantees to proceed with approved projects using their own resources. UMTA agrees to reimburse the grantee for expenses and debt service up to the amount of inflation.

The authorization of ACCs has proven to be less useful than intended primarily because existing statute forces grantees to bet that inflation will be higher than their debt costs and unanticipated cost increases. Few grantees are willing to enter into an ACC on those conditions since, if they guess wrong on future inflation, they must cover any losses.

The Committee bill would make the ACC mechanism more workable by limiting federal reimbursement for financing costs to the most favorable interest terms that are reasonably available to the project at the time of borrowing. This provides a powerful incentive for prudent financial management without exposing grantees to undue risks in the event inflation behaves in ways that are not anticipated by market forces at the time of borrowing.

Turnkey Systems Procurement. The Committee bill would authorize the Secretary to approve system procurement on a "turnkey" or "Build-Operate-Transfer" (BOT) basis. Under turnkey procurement, a grantee would contract with a vendor to (1) build a transit system that meets specified performance criteria, (2) operate the system for several years to ensure acceptable performance of the technology, and then (3) transfer the system to the operator. It is a method used increasingly by municipalities for procurement of high technology systems, for example, by U.S. cities for major solid waste and energy projects, by airports for people-mover systems, and by European cities for major transit projects.

Conventional transit procurement regulations, assume that a grantee will do the basic systems engineering itself, setting specifications for each component and assembling the parts into a final operating system of the grantee's own design. Conventional procurement regulations require completion of an environmental impact statement and engineering prior to vendor selection.

These procedures block procurement of automated guideway systems, such as are being considered for Honolulu and Houston. These systems involve a package of several closely integrated technologies and are vendor-specific, that is each vendor typically uses a different technology. As a result, environmental impact analysis and engineering cannot be completed until the technology (and thus, de facto, the vendor) is selected.

The Committee bill directs the Secretary to develop regulations for a turnkey procurement process. The bill would allow the solicitation for a turnkey system project to be conditionally awarded before all Federal requirements have been met so long as the award is made without prejudice to the implementation of those Federal requirements. Under turnkey regulations, therefore, section 13(c) labor protections and other federal requirements would apply to the completed project. Federal financial assistance under the FT Act would be made available when the recipient has complied with relevant Federal requirements.

The Secretary is expected to develop appropriate regulations in a timely manner. In the meantime, while those regulations are being developed, the Secretary would be authorized to select a maximum of 4 projects under this paragraph and temporarily to waive requirements of law to the extent that such waiver is appropriate to achieve efficient and expeditious implementation of those projects.

Multi-year Procurement of Rolling Stock. The Committee bill would authorize a transit operator to enter into multi-year agreements for the purchase of rolling stock, such as buses and rail cars, and replacement parts. The purpose of this reform is to permit a reduction of overall procurement and maintenance costs through greater standardization and more orderly replacement of fleets. The agreements could provide for an option to purchase additional rolling stock or replacement parts for a period not to exceed 5 years from the date of the original contract.

The Committee considered favorably a proposal to amend existing statute with language explicit authority for "buy-back" procurement, under which an operator could award a contract to other than the low bidder so long as the recipient pays the extra cost with non-federal funds and Federal reimbursement is made on the basis of the low bid. The Committee did not include this amendment after being assured by the Administration that existing law permits operators to achieve this by using negotiated procurement procedures. The Committee is concerned that many transit operators seem unfamiliar with ways in which currently sanctioned procurement procedures can be used to achieve the long term savings of maintaining a standardized fleet of high quality vehicles. The Committee expects the Secretary to inform all operators of these procedures and, if necessary, to streamline the procedures so that they are more workable for more operators.

The Committee bill would also authorize two or more recipients to cooperate for the joint procurement of vehicles. The Secretary is expected to provide streamlined procedures so that rural transit operators and smaller communities can efficiently use such joint procurement procedures.

Commute to Work Benefits

The Committee bill would assert Congressional findings regarding commute-to-work benefits. Under the existing tax code, the use of alternative forms of transportation—such as mass transit, and shared-ride services—is discouraged by inequitable tax treatment. Although employers may provide unlimited tax-exempt parking benefits to employees, transit and vanpool benefits are limited to $15 per month. If transit benefits exceed $15 per month, then the entire amount of benefits (including the first $15) becomes taxable. This tax policy is inconsistent with other national objectives including the need to conserve energy, reduce reliance on energy imports, relieve congestion and reduce air pollution. This section would affirm the need to provide equal benefits to employees commuting via private automobile or public transit.

Rail Modernization Formula: The Committee bill would make two fundamental amendments to the rail modernization program. First, the bill would establish a statutory formula for the distribution of rail modernization funds; under existing law, the program is distributed on a discretionary basis. The creation of a statutory formula will bring a predictability and certainty to the distribution of rail modernization funds that has been absent since the inception of the program. It is expected that the move to guaranteed apportionments will also enable transit properties to (1) gain greater access to private financing and (2) carry out capital projects in a more timely fashion.

Second, the bill would expand the coverage of the rail modernization program to include

historic rail systems as well as those "new" fixed guideway systems confronting the need for greater modernization. Historic rail systems are presently the exclusive recipients of rail modernization monies. These systems—generally inherited by public authorities after years of private ownership and neglect—continue to have large capital needs and, in the Committee's estimate, deserve to receive the bulk of federal modernization dollars. Yet many "new" fixed guideway systems are also approaching an age where major capital investments are needed if significant deterioration is to be avoided.

The Administration proposal would have permitted all "new" fixed guideway systems to participate under the rail modernization program. The Committee bill, by contrast, would define "eligible systems" as including only historic rail systems and other fixed guideway systems in revenue service for more than ten years.

The Committee strongly believes that the rail modernization program should remain well-targeted and well-defined. The primary purpose of the program would continue to be to fund large modernization projects for which section 9 funding is inadequate. That purpose would be undermined by allowing the participation of "new" systems that do not have substantial modernization needs. Such systems would most likely use rail modernization funding for routine maintenance activities. The existing distinction between rail modernization and Section 9 activities would, thereby, be lost—weakening the ability of supporters for both programs to argue persuasively for continued or expanded funding.

The Committee has chosen 10 years of revenue service as a convenient proxy for modernization needs. The Secretary would have the discretion to permit fixed guideway systems that have not been in revenue service for such period to participate—on a year-by-year basis—where such systems demonstrate that they have modernization needs that cannot adequately be met by section 9 funding.

The Committee formula adopts, with several modifications the three-tier distribution system recommended by the American Public Transit Association. The Committee notes that APTA conducted extensive negotiations and discussions among all affected transit properties in devising its recommended formula. The new statutory formula would balance the competing needs and claims of historic and "new" fixed guideway systems.

The formula would work as follows:

Tier One—Hold Harmless for Historic Rail Systems. In a given fiscal year, the ten historic systems would receive all the funds up to an appropriation of $455 million, the amount appropriated in fiscal year 1991. The ten historic systems would include those systems that (1) have received rail modernization funding in at least two of the five fiscal years 1986–1990; and (2) received in fiscal year 1991 at least 0.5 percent of the funding made available under the Section 9 rail tier. Systems qualifying under this definition include: Boston, Chicago, Cleveland, Maryland commuter rail, New York City, Northeastern New Jersey, Philadelphia, Pittsburgh, San Francisco and Southwest Connecticut.

Funds would be distributed as follows:

41 percent of the total "hold harmless" amount would be set aside for New York and Southwest Connecticut. These funds would be further divided so that New York would receive 35 percent of the total amount and Southwest Connecticut would receive 6 percent.

2 percent of the total amount would also be set aside for Pittsburgh.

The remainder of the funds would be distributed primarily on an historic share basis, recognizing in a fair and equitable manner the proportion that each historic system received under the program. Each remaining historic system would generally receive, on an annual basis, the higher of (a) its 3-year share (i.e. averaging funds received from fiscal years 1988 through 1990) or (b) its 7-year share (i.e. averaging funds received from fiscal years 1984 through 1990). The Secretary would make such pro rata adjustments as necessary in applying this allocation. Each of these systems would be assured, at a minimum, the amount it would have received under the Section 9 rail tier formula.

Tier Two—50/50 Allocation between Historic Rail Systems and "New" Fixed Guideway Systems. The first $70 million in appropriations above $455 million would be divided on a 50/50 basis between the historic rail systems and those "new" fixed guideway systems experiencing substantial modernization needs—those systems in revenue service for at least ten years. These excess funds would be distributed by the factors contained under the Section 9 rail tier formula.

Tier Three—Distribution By Section 9 Formula. All amounts appropriated in excess of $525 million would be distributed to all historic rail systems and eligible "new" fixed guideway systems by the factors contained under the Section 9 rail tier formula.

The Committee intends that the Secretary, in allocating funds under the revised rail modernization program, continue to take into account the special circumstances of the San Francisco area. The Committee intends that San Francisco's share under the Section 9 rail tier formula equal to the cumulative formula share of the three rail systems currently operating within the area. In addition, the Committee intends that the designated recipient in the San Fransico region—the Metropolitan Transportation Commission—retain the discretion to allocate rail modernization funds among the area's three rail systems as it deems appropriate.

The Committee intends that the Secretary establish guidelines for the expenditures of rail modernization funds that are consistent with the traditional purposes and activities of the program. Such activities have included the replacement, renovation or refurbishing of existing facilities and equipment to achieve appropriate levels of service, safety, capacity or reliability.

OTHER AMENDMENTS TO SECTION 3 CAPITAL GRANTS

Title Change. The Committee bill would rename section 3 of the Federal Transit Act to read "Capital Grant or Loan Program" rather than "Discretionary Grant or Loan Program" to reflect the fact that Section 3 Rail Modernization assistance will be allocated by formula.

Grandfathered Jurisdictions. The Committee bill would clarify that all existing letters of intent, full funding grant agreements and letters of commitment that are in effect when this Act is enacted, will remain in effect notwithstanding other provisions of this Act.

The Committee intends that this "grandfather" clause will extend to the Westside Light Project in Portland, Oregon, as identified in section 328 of P.O. 101–516. The Committee directs that the extension of this project to the Transit Center in the City of Hillsboro, Oregon (subject to the regional decision documented in the regions preferred alternatives report) shall proceed under the existing terms and conditions. The Committee understands that progress on the Hillsboro extension will not preclude FTA from approving alternative analysis for other projects in the region.

Innovative Techniques and Practices. The Committee bill would expand eligible activities under the section 3 discretionary program to include projects that introduce innovative techniques and methods to public transportation. This change simply codifies existing practice by incorporating language from section 4(i) of the Act into section 3.

Capital Grants Eligible Activities. The Committee bill would add to the list of eligible activities under section 6, the development of corridors to support fixed guideway systems. Grants could be used for bus service improvements, marketing of bus service, protection of rights-of-way through acquisition, transportation system management improvements (such as dedicated bus lanes, high occupacy vehicle lanes, construction of park and ride lots) and any other improvements that would result in increased transit usage in the corridor.

Overmatch and Fiscal Capacity. The Committee bill would require the Secretary to take account of differences in state and local fiscal capacity if the Secretary gives special consideration in project approval for projects that "overmatch", or exceed the required state and local shares of project costs. The Committee intends to avoid placing distressed communities at an unfair disadvantage in the awarding of federal transit assistance. This change would maintain incentives for states and localities to contribute as much of the project costs from their own resources as is reasonable. The Committee bill also mitigates any inappropriate affects of "overmatch" by permitting highway funds to be used to reduce assistance requested under Section 3, as noted elsewhere in this report.

Capital Grants for Elderly Persons and Persons with Disabilities. The Committee bill would allow public transit agencies to apply for funding under the Section 3 grant program for capital transportation projects that are specifically designed to meet the needs of the elderly and persons with disabilities.

The Federal Transit Act and the Rehabilitation Act have long guaranteed the rights of persons with disabilities and elderly persons to use mass transportation. The recently enacted Americans with Disabilities Act of 1990 imposes requirements on transit providers. The Federal Transit Act and the Rehabilitation Act have long guaranteed the rights of persons with disabilities and elderly persons to use mass transportation. The recently enacted Americans with Disabilities Act of 1990 imposes requirements on transit providers that are more stringent than current law and, as a consequence, more costly. The Committee bill would provide public transit agencies with a mechanism to help address the major capital costs associated with ADA compliance.

Allocations. The Committee bill would amend the statutory allocation of Section 3 funds that was established by the Surface Transportation and Uniform Relocation Act of 1987. The 1987 Act mandated that Section 3 grant funds be allocated as follows: 40 percent for rail modernization; 40 percent for construction of new fixed guideway systems and extensions to fixed guideway systems; 10 percent for the replacement, rehabilitation and purchase of buses and related equipment and the construction of bus-related facilities; and 10 percent for a Secretary's discretionary pot to be allocated among the three major activities.

The Committee bill would establish a modified allocation of Section 3 funds; 40 percent for rail modernization; 40 percent for construction of new fixed guideway systems and extensions to fixed guideway systems; and 20 percent for the replacement, rehabilitation and purchase of buses and related equipment and the construction of bus-related facilities. The Committee has taken such action in recognition of the substantial bus needs anticipated over the coming five year period, particularly given the recent mandates of the Clean Air Act Amendments of 1990 and the Americans with Disabilities Act of 1990.

Local Share. The Committee bill would clarify the existing statutory requirement that 25 percent of the cost of a project approved under section 3 be provided from non-federal sources. Under current practice, UMTA recognizes as non-federal match only those commitments that are made after a project is approved. The section would permit the costs of rolling stock purchased prior to the approval of a section 3 application to satisfy the non-federal share requirement if (1) the stock was purchased with no federal assistance, (2) the stock would not have been purchased except for its planned use on an extension eligible for Section 3 assistance, and (3) the stock is to be used on the extension for which the Section 3 application is being submitted.

The Committee is aware of one fact situation that would be covered by this amendment. In 1989, the Maryland Department of Transportation placed an order for 35 light rail cars for the new Baltimore Light Rail system. The order was intended to supply 27 cars for the operation of the light rail line now under construction (the "main line") and an additional 8 cars for future use on planned extensions to the system. The inclusion of the 8 cars represented commendable foresight on the part of the State: it ensured that the entire rolling stock inventory on the main line and the planned extensions would be compatible and enabled the State to save money by ordering a larger number of cars in advance. All costs for the construction of the main line and the 35 rail cars have been paid entirely with non-Federal funds.

The State expects to file a Section 3 application for the new extensions in late 1991 and recently began to discuss with UMTA the possibility of Federal support. UMTA informed the State that the costs of the 8 cars could not be counted towards the required non-federal share because the order was placed before approval of an application for section 3 funds. A different resolution would have occurred if the State had ordered the rail cars after approval. Then, the 8 cars would be part of the Full Funding Grant Agreement and any funds expended for such cars could count toward the non-federal share.

The Committee has concluded that the costs of purchasing the 8 rail cars should count towards Maryland's satisfaction of the non-federal share requirements under section 3. The expansion of the purchase order in 1989 was a prudent decision that enhanced long-term project management and reduced costs; Maryland should not be penalized for such action.

The Committee notes the narrow scope of this amendment; it would merely clarify, in a limited way, the non-federal matching requirement contained under Section 3. The amendment would not change any requirements governing the eligibility of the extensions for federal funding. Nor does it affect the Secretary's discretion to approve or disapprove a Section 3 application for the extensions. Nor does it change the level of either the federal or the non-federal matching requirement.

CRITERIA FOR NEW STARTS

Elimination of biases. The Committee bill would eliminate biases in federal law that give state and local officials a disincentive against choosing the most effective solutions to local mobility and clean air problems, regardless of the transportation mode. Under current law, most jurisdictions have a strong incentive to choose highway construction rather than other transportation options because federal highway funds are so much easier to receive. Highway projects qualify for a higher federal match, local matching funds may be available only for highway projects, and transit projects have a more burdensome and time consuming approval process. As transit becomes more urgently needed in areas with severe air pollution and congestion, these biases in federal law become even more troublesome.

The Committee bill provides a more "level playing field" by relieving transit application review requirements under certain circumstances. FTA's consideration of local overmatch would be refined and linkage between transportation and air quality would be recognized. Equitable evaluation of each transportation alternative is necessary for flexible use of transportation funding, as provided in the Committee bill and the highway bill reported from the Senate Environment and Public Works Committee.

FTA Review Process. A key barrier to the choice of transit is the current approval process for major transit new start and extensions projects. This process was originally intended to provide information for allocation of scarce federal discretionary grants for transit. Over time, this has evolved into a process that itself serves as a grant rationing device designed to slow down all projects and keep applicants away from the window as long as possible. Under the previous Administration, federal cost-effectiveness thresholds were used to aggressively block construction of fixed guideway projects that the administration philosophically opposed.

Many transit experts have found the transit approval process narrow in scope, overly complex and excessively time-consuming. Federal procedures do not adequately recognize potential benefits of a transit project as reflected in reduced air pollution and energy consumption, increased economic development, improved mobility for transit dependent people, and relief of roadway congestion.

The Committee believes that transit grant approval process should weed out unsound projects without needlessly escalating costs on meritorious projects. Excessive approval procedures erode the buying power of federal assistance, makes it difficult to maintain a local consensus for transit, and discourage localities from carrying out the most effective transportation strategy. The Committee intends that FTA will assess current procedures and reduce unnecessary or excessive reports and requirements in the project development process.

The Committee bill would broaden the criteria used in evaluation of new starts projects to include consideration of a project's social, environmental and economic impacts. Administrative cost-effectiveness analysis has used changes in ridership as a proxy for other benefits derived from transit. The Committee bill would revise federal cost-effectiveness analyses to take explicit account of direct and indirect costs associated with each transportation alternative, including the costs of resulting air pollution, delay caused by congestion, and increased importation of foreign fuel. FTA would also give appropriate recognition to other benefits of transit—such as realistic expectations for economic development, increased mobility for transit dependent persons, and local efforts to support transit through land use and other policies. FTA would be expected to consider a community's efforts to facilitate the development, improvement and use of efficient transportation systems through existing land use policies and projected future patterns of development.

The Committee intends that these added criteria will receive equal consideration as existing indices in determining project worthiness. That is, a project would not have to meet existing criteria before these additional factors would be considered. The Committee further intends that the FTA consider the costs and benefits of transit and other alternatives on a long-range basis.

The Committee bill would adjust the numerical cost-effectiveness threshold used to rate projects so that it reflects inflation and regional differences in land, construction and operating costs. The Committee expects that, until updated indices are available, FTA would reflect inflation adjustments in current indices.

The Committee bill would clarify the meaning of "local financial commitment" and "stable funding sources" to ensure that transit providers can carry through on their commitment to develop and operate a new or expanded fixed guideway system without reducing existing levels of service. To meet the criteria for local financial capacity, a recipient would be required to have reasonable contingency funds available to cover unanticipated project cost overruns; have stable, reliable and available funding sources for the duration of the project timetable; and maintain transit service at existing levels. Determinations of the stability, reliability and availability of local funding sources would be based on existing grant commitments; the degree to which funding sources are dedicated to the project; and any debt obligations which exist or are proposed to fund the project or other transit activities.

The Committee did not include provisions recommended by the Administration to require the assessment of innovative project financing as part of the section 3 project development process. The Committee believes that consideration of alternative financing options is important, but should apply equally to all federal transportation investments. The Committee has, therefore, included these provisions in the transportation planning process described in this bill.

Overmatch policy. Under current practice, UMTA gives preference to applications that have state or local funding substantially above the required non-federal match. That policy is intended to ration scarce Section 3 resources and give preference to projects that are of very high priority at the local level. In practice, however, the policy places relatively poor areas at a disadvantage. The policy also greatly exacerbates the bias against transit projects by driving the required state/local share for transit projects well above comparable shares for highway projects. For highway construction projects the required match is the match, but for transit construction projects the required match is the *minimum* match. A community must often provide a local matching share at least the 25 percent match required in law if its project is to have a chance at approval.

The Committee bill would prohibit FTA from discriminating in the allocation of discretionary funds against communities that can't provide overmatch due to fiscal incapability.

The Committee bill would, however, provide incentives for communities with more available resources to contribute the greatest amount of local share reasonably possible. Project review processes would be expedited for applications that request Section 3 assistance of less than $25 million or less than one-third of the total costs of a project of program of related projects. These limits could be achieved by using higher levels of non-federal funding and allocating other federal transportation assistance to the project, such as federal highway assistance. Federal highway assistance could not be used for the required local match, but it could be used to reduce the need for Section 3 assistance to qualify for expedited project review and approval.

The Committee recommends that FTA, if giving preference to communities that overmatch federal requirements, identify and consider per capita indices of state and local project contributions, in addition to aggregate measures of contributions. This would provide a fairer assessment of the relative level of financial commitment from smaller urban areas.

Linkage with the Clean Air Act. The Committe bill would reinforce the important link between air quality and transportation that is recognized in the Clean Air Act, as amended. The new starts criteria and the limitation of development to one corridor at a time would be waived for transportation control measures required to carry out an approved State Implementation Plan (SIP) in extreme or severe non-attainment areas. In other non-attainment areas, review requirements would be expedited for such transportation control measures required in an approved SIP.

The Committee expects that this section would be implemented through formal public notice and comment procedures. The Committee further expects that this Committee and the House Public Works and Transportation Committee receive advance opportunity to comment on FTA's capital investment policy.

FEDERAL SHARE FOR ADA AND CLEAN AIR ACT COMPLIANCE

The Committee bill would establish a higher federal match for those projects that involve the acquisition of bus-related equipment (e.g. lift equipment, particulate traps) or the construction of facilites (e.g. alternative fuels facilities) required by the Clean Air Act Amendments of 1990 or the Americans with Disabilities Act. The federal match would be set at 90 percent of the cost of such equipment or facilities. The changes apply to projects funded under sections 3, 9, 16(b), and 18. The Secretary would determine the portion or portions of a project eligible for the higher federal match. The current federal match for capital projects is 80 percent under sections 9, 16(b) and 18 and 75 percent under section 3.

Projects eligible for the higher match would include, for example, the procurement of lift-equipped buses and vans; the acquisition of particulate traps; the construction or renovation of bus stops, terminals and transfer stations; or the construction of alternative fuels facilities.

The Americans with Disabilities Act requires the provision of special services and improved access to regular services for persons with disabilities. Under ADA, every transit vehicle, bus and rail car purchased or leased by a transit system must be accessible to persons with disabilities, including people using wheelchairs. Light, rapid and commuter rail systems must carry at least one accessible car on each train within five years. New "key" rail stations must be accessible within three years unless an exception based on high cost is met. Special on call services (complementary paratransit) must be available for those disabled riders who, due to the severity of their impairment, are unable to use a regular fixed-route system, even if it is accessible.

The Department of Transportation estimates the cost for all ADA transportation requirements to be between $850 million and $1.3 billion per year.

The Clean Air Act Amendments of 1990 will also have a major impact on costs of providing transit. The cost direct effect will be on urban bus systems (those bus systems which operate intracity in urbanized areas) which will have to lower their particulate matter emissions and bear the costs of bringing their fleets into compliance with the Act through the use of newer, cleaner technologies.

Estimates of the cost of compliance with the Clean Air Act Amendments vary, depending on the system or technology used. The costs associated with replacing buses upgraded to use clean alternative fuels range from $48,000 per bus for methanol fuel to $64,000 per bus for compressed natural gas. The estimated cost of replacing a bus equipped with particulate traps is $14,000. In addition, the estimated cost for replacing or modifying existing fuel storage systems to meet new federal guidelines runs as high as $1 million per system.

The combined costs to transit systems associated with compliance with the Clean Air Act Amendments of 1990 and the Americans with Disabilities Act will be significant. The Committee notes that the proposal submitted by the Administration contained only $50 million to assist transit providers with compliance with the Clean Air Act Amendments of 1990 and the Americans with Disabilities Act, and proposed reducing the federal share for these projects to 60 percent.

The Committee is aware that many transit systems may have difficulty meeting the costs associated with compliance. The Committee is also aware that the current state of the national economy and the fiscal distress faced by many states and localities may pose added burdens for transit systems already struggling with rising fuel costs and in some cases, reduced services.

The higher federal match included in the Committee bill recognizes the significant fiscal impact that compliance with the new federal laws will entail and attempts to provide transit systems with some assistance in meeting the goals of these federal mandates. The bill also recognizes the importance of transportation demand strategies as noted from section 108 of the Clean Air Act Amendments of 1990 and encourages research and technical assistance for these purposes.

Comprehensive Transportation Strategies

The Committee bill would reform the current transportation planning process to give more attention to intermodal solutions and to give metropolitan planning organizations (MPOs) in certain areas clearer responsibilities for approving projects. The Committee bill requires the development of comprehensive metropolitan transportation strategies by metropolitan planning organizations. The Committee bill is designed to make few significant changes in current practice for areas that are less densely populated and that do not have problems with air pollution.

The existing urban transportation program and planning process largely has been positive. However, the current environment, the nature of growth patterns, and transportation needs in metropolitan areas require a new surface transportation program architecture coupled with an enhanced transportation planning and investment decisionmaking process to address state, regional and local needs within the context of national policy objectives and strategies. The new process should provide for a new, more collaborative decisionmaking arrangement that actively engages the state, public transit operators, and local government officials.

The current Section 8 program follows the practice in the Section 134 metropolitan highway planning requirements for defining the planning area boundary, which is essentially the urbanized area within each metropolitan region. This practice makes sense when the original metropolitan planning requirements were crafted in 1962, but is inadequate today. Since that time, suburbanization and its attendant problems, including degradation of air quality, require an expansion of the metropolitan boundary to enable growth areas in the outer reaches of the metropolitan area to be assessed within an overall transportation and program. The need to include these growth areas was recognized in the recently enacted Clean Air Act Amendments which expanded the non-attainment boundary to include the entire Metropolitan Statistical Area.

The Committee believes that there should be an orderly evolution of a strengthened collaborative metropolitan planning and programming process. Effective collaboration requires full representation and participation of the state, local public officials, and the public transit operator(s) in the process. Because the Committee recognizes that within metropolitan area boundaries, growing suburbanization can lead to imbalances between addressing central city and suburban needs, the Committee has provided for assured representation of central cities on metropolitan planning agency. This special consideration for the needs of central cities should be reflected in the expenditure of funds as well.

In amending Section 8, the intent of the Committee is to provide for an orderly reassessment and redesignation of the planning agency and area by local public officials and the Governors over a reasonable period of time. The Committee recognizes the need for a phase-in process for redesignating Transportation Management Areas which are the larger metropolitan areas and areas which are not meeting ozone air quality standards. However, the Committee intends that the highest priority for redesignation of institutions and area boundaries should be given to the 96 non-attainment areas. In non-attainment areas classified as serious, severe or extreme, redesignation of Transportation Management Areas and their boundaries should occur within two years, with the balance of TMAs designated as soon as practicable but not later than four years after enactment.

Statement of national interest. The Committee bill declares Congressional intent that it is in the national interest to encourage and promote the development of transportation systems that integrate various modes of transportation and efficiently maximize mobility of people and goods within and through metropolitan areas and minimize transportation-related fuel consumption and air pollution. The Secretary would be re-

quired to cooperate with state and local elected officials in metropolitan areas in the development of comprehensive transportation strategies for achieving this objective.

Metropolitan Planning Organizations. The Committee bill would require that an MPO be designated for each urbanized area of more than 50,000 in population, as under existing law. The MPO structure would be determined by agreement among the Governor and units of general purpose local government representing at least 75 percent of the affected population, including the central city or cities, as defined by the Bureau of the Census. If an MPO is in a metropolitan area that (1) has population over 250,000, (2) is in non-compliance under the Clean Air Act, or (3) is otherwise eligible for designation as a "transportation management area" as noted below, the MPO will have to include local elected officials, officials of agencies that administer or operate major modes of transportation in the metropolitan area (including, at a minimum, all transportation agencies that were included as of June 1, 1991), and appropriate state officials. For purposes of this section, the term "metropolitan area" means an area for which one metropolitan planning organization is responsible.

Once an MPO is designated, whether under this or earlier provisions of law, the designation would remain in effect until revoked either by agreement among the Governor and the local governments or by other state or local procedures. To accommodate the new responsibilities conferred under the bill, this subsection would permit MPO's to be reorganized and redesignated at any time by agreement among the Governor and local governments representing at least 75 percent of the metropolitan area's population, including the central city or cities, as defined by the Bureau of the Census. The bill requires that an MPO be redesignated within a period of 12 months if the Secretary designates the metropolitan area to be a transportation management area. The Secretary is required to establish appropriate procedures and timetables for MPOs to comply with membership requirements and other provisions in law.

The Committee bill would require each governor, when an MPO is designated or reorganized, to ensure that the MPO is structured to (1) give balanced assessment to all modes of transportation, including roadway and public transit facilities, (2) give full consideration to the need for mobility of people and goods into and through central cities within the metropolitan area, and (3) otherwise carry out the MPO's responsibilities under federal law. The Governor would have to certify to the Secretary that the requirements of the previous sentence have been met.

Transportation Management Areas. The Committee bill would require the Secretary to designate certain metropolitan areas to be "transportation management areas", within which the MPO will have expanded responsibilities for planning and projects selection. Transportation management areas would include all metropolitan areas that have greater than 250,000 population, or are nonattainment areas under the Clean Air Act, as amended. The Secretary would be required to publish and annually update a list of metropolitan areas that meet those criteria.

The Secretary could also designate additional transportation management areas at the request of the Governor and MPO. Such additional metropolitan areas may include ecologically fragile areas of national significance that are expected to be significantly affected by transportation decisions. This would permit local officials in ecologically important areas with smaller populations, such as the Lake Tahoe area in California and Nevada, to have the direct authority they need to carry out a comprehensive, long-range transportation strategy that integrates all modes.

The designation of a transportation management area would remain in effect until revoked by the Secretary. The MPO in a transportation management area is required to carry out a continuing, cooperative and comprehensive transportation planning and programming process in cooperation with the state and transit operators. The bill gives such MPOs additional authority and responsibility.

To provide for an orderly implementation of intermodal planning and programming in transportation management areas, the Committee bill provides a transition period. The Secretary would be required to achieve the designation of not less than a minimum number of transportation management areas in each of the next 5 years: by the end of the first year after enactment, 20 percent of the eligible metropolitan areas would have to be designated; by the end of the second year, 40 percent; by the end of the third year, 60 percent; by the end of the fourth year, 80 percent; and all such areas would have to be designated in the fifth year. The bill makes it clear that the Secretary is responsible for exceeding the minimum percentages required for designation. Although the Secretary can make adjustments for compelling local circumstances, the Secretary is expected to begin with designation of metropolitan areas that have the most severe problems of air quality and traffic congestion. The Committee expects that priority would also be given to metropolitan areas where the MPO is well organized to comply with the requirements of this section and requests such designation. The Secretary would be required to designate all nonattainment areas that are classified under the Clean Air Act, as amended, to be "moderate", "serious", "severe" or "extreme" nonattainment areas for ozone or "serious" nonattainment areas for carbon monoxide within 2 years after the date of enactment of this section.

Metropolitan Area Boundaries. The Committee bill provides that the boundaries of a metropolitan area would be determined by agreement between the MPO and the Governor. To provide for comprehensive, long-range transportation planning, each metropolitan area would have to include at least the existing urbanized area and the contiguous area that can reasonably be expected to be urbanized within the subsequent twenty year period.

The bill makes provision for metropolitan statistical areas that are so large or complex that one MPO would be too unwieldy. The bill, however, would discourage the break up of MPOs that have already been formed. This subsection permits more than one MPO to be designated within a metropolitan statistical area, as defined by the Bureau of the Census, only if the area had more than one designated MPO on January 1, 1991 and the Secretary determines that more than one MPO is needed because of the size and complexity of the area. The bill authorizes the Secretary to require consolidation of MPOs in a metropolitan statistical area if the Secretary does not find that more than one MPO is needed for coherent regional transportation decision making. If more than one MPO is needed, the bill requires that appropriate provision be made to coordinate the metropolitan transportation strategies of all MPOs within the metropolitan statistical area.

The bill requires all areas that are in noncompliance under the Clean Air Act, as amended, to be included within the boundaries of the appropriate MPO's metropolitan area. An appropriate metropolitan area would also have to include any area that the Governor and MPO determine are likely to be significantly affected by air pollution within the foreseeable future, as determined by the Secretary. If more than one MPO has authority within a non-attainment area, appropriate provision would have to be made to coordinate the metropolitan transportation strategies within the whole non-attainment area.

The bill would foster coordination of transportation strategies across multi-state areas. The Secretary would have to establish requirements to encourage Governors and MPOs with responsibility for a portion of a multi-state Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA) to provide coordinated transportation planning for the entire MSA or CMSA.

The bill would give States consent to enter into interstate agreements or compacts that are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section.

Development of Transportation Strategy. The Committee bill would require each MPO to prepare and update periodically a metropolitan transportation strategy for its metropolitan area. The Secretary would establish procedures according to which the strategy would be prepared. In developing the strategy, the MPO would be required to consider the environmental, energy, land use, and other regional effects of all transportation projects to be undertaken within the metropolitan area, without regard to funding source.

The Committee bill would specify major elements to be included in a published strategy in contrast to existing statute, which specifies elements of a local planning process. The Committee believes the federal government should direct its attention to the *product* of a local planning process, leaving more discretion to states and localities to define the most appropriate process for arriving at that product.

Each MPO would have to publish the strategy or otherwise make it readily available for public review. The MPO would also have to submit the strategy to the Governor for information purposes. The Secretary would have to establish dates and procedures for the publication and submission of strategies.

In Clean Air Act non-attainment areas for transportation-related pollutants, an MPO would be required to coordinate the development of a metropolitan transportation strategy with the development of transportation measures of the State Implementation Plan required by the Clean Air Act.

Each MPO would be required to provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation and other interested parties with a reasonable opportunity to participate in the development of the strategy.

The Secretary would have to assure that each MPO is carrying out its responsibilities under applicable provisions of federal law. At least every three years, the Secretary would be required to provide certification to those MPOs that are complying with requirements

of federal law. If the Secretary finds, after reasonable notice and opportunity for hearing, that an MPO is not carrying out its responsibilities under applicable provisions of federal law, the Secretary would have to deny certification. In that case, and until satisfactory corrective action is taken, the Secretary may suspend or disapprove in whole or in part the expenditure within the metropolitan area of funds made available under the Federal-Aid Highway Act of 1991 or the Federal Transit Act. The Secretary would be specifically prohibited from (1) withholding certification of an MPO on the basis of the MPO's policies and criteria for determining the feasibility of private sector participation in accordance with section 8(e) or (2) otherwise impeding an MPO's implementation of such policies and criteria.

Contents of Strategy. The Committee bill requires metropolitan transportation strategies to be in a form that the Secretary deems appropriate. At a minimum, a strategy would:

(A) Identify transportation facilities (including major roadways, mass transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions, such as (i) moving goods within the metropolitan area and among distant markets, (ii) enabling people to move quickly to and from home, jobs and other destinations, and (iii) connecting complementary modes of transportation (such as highways, transit systems, ports, railroads and airlines);

(B) assess major demands on the metropolitan transportation system, projected over the subsequent 20 year period;

(C) set forth a long-range strategy for meeting metropolitan area personal mobility and goods transportation needs, including state and local actions to manage travel demand, improve transportation operations and management, increase the efficiency and effectiveness of existing facilities, or provide new transportation capacity;

(D) explain how proposed transportation decisions will (i) achieve compliance with applicable requirements of the Clean Air Act, as amended, the Clean Water Act and other environmental and resource conservation laws, (ii) further applicable federal, state and local energy conservation programs, goals and objectives and (iii) affect other important social, economic and environmental objectives of the metropolitan area as reflected in publicly adopted plans, such as those concerning housing, community development, and historic preservation;

(E) explain (i) the extent to which state and local policies regarding land use and transportation will affect metropolitan-wide mobility, and (ii) how proposed transportation decisions will affect future travel demand, growth in vehicle use, mobile source emissions, and land use and development, taking into consideration the provisions of all applicable short-term and long-term land use and development plans;

(F) include a financial plan showing how the metropolitan transportation strategy can be implemented, which plan shall indicate resources from all sources that are reasonably expected to be made available to carry out the strategy, and recommend any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls, and congestion pricing;

(G) project capital investment and other measures necessary to (i) ensure the preservation of the existing metropolitan transportation system, including requirements for operations, resurfacing, restoration and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization and rehabilitation of existing and future public transit facilities and (ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods; and

(H) indicate any proposed transportation enhancement activities, as defined in the Clean Air Act.

For metropolitan areas that are not transportation management areas, the bill would permit the Secretary to provide for abbreviated strategies appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems, including transportation related air quality problems, in such areas. The state would be required to develop a state-wide transportation strategy that takes into account the transportation needs of areas for which no MPO has been designated.

Development of transportation improvement programs (TIP)

The Committee has provided that a Transportation Improvement Program is required to be developed by every Metropolitan Planning Organization. The TIP will include all federally-assisted projects and activities to be carried out within the metropolitan area. Section 8(c) further provides that in transportation management areas—those over 250,000 population and non-attainment areas—projects and activities funded under Section 106 of the Federal-Aid Highway Act of 1991 and sections 3 and 9 of this Act will be selected and approved by parties acting collaboratively through the metropolitan planning process. The projects that are selected through this collaborative process in Transportation Management Areas should reflect the highest priority needs and interests that would be served by using these funds in carrying out comprehensive transportation strategies and meeting national objectives. However, it should be noted that some projects are designated solely to preserve and maintain existing highway and transit facilities and activities, and are largely the programming responsibility of the state or public transit operator. The Committee does not intend for these projects to be subject to the metropolitan selection and approval process. These projects are required, however, to be contained in the Transportation Improvement Program for the metropolitan area.

The Committee intends that projects exempted from the selection and approval process be strictly limited to operations management, maintenance and preservation projects that do not add to the physical design capacity of facilities. Excepted projects would not include, for example, highway projects that provide for additional lanes, auxiliary lanes, or interchanges, rail extensions, new bus facilities, or new or extended bus routes.

The Committee bill would require an MPO, in cooperation with the state and relevant transit operators, to develop and submit to the Secretary for review a transportation improvement program for the ensuing period of not less than 3 years and, to the extent practicable, for subsequent periods of not less than 3 years. The program would have to include all projects within the metropolitan area that are proposed for funding pursuant to the Federal-Aid Highway Act of 1991 and the Federal Transit Act. The program would have to conform with the approved metropolitan transportation strategy and the State Implementation Plan required under the Clean Air Act, as amended. The program would have to include a project, or an identified phase of a project, only if full funding for such project or project phase can reasonably be anticipated to be available within the period of time contemplated for completion of the project. In the case of a major project to expand the transportation capacity, an appropriate range of alternatives would have to have been analyzed in accordance with the National Environmental Policy Act.

The Committee bill would require the MPO to update or reapprove the program annually, although the Secretary could permit less frequent updating for areas that are not designated to be transportation management areas. An MPO would be able to amend the program at any time, provided that the amendment is consistent with the metropolitan transportation strategy.

The Committee bill would require an MPO, prior to approving a transportation improvement program, to provide citizens, affected public agencies, representatives of transportation agency employees, private providers to transportation and other interested parties with reasonable notice of, and opportunity to comment on, the proposed program.

A TIP would have to identify priority projects reflecting projected funding and the objectives of the metropolitan transportation strategy that shall be carried out for each relevant programming period.

The Committee bill would require each governor to develop and submit to the Secretary a TIP for areas for which no MPO has been designated. The state TIP would have to cover a period of not less than 3 years and include projects proposed for funding in both metropolitan and non-metropolitan areas under the bridge and interstate assistance programs of the Federal-Aid Highway Act of 1991.

Approval of projects. The Committee bill would give the MPO in a transportation management area authority to approve all projects in the metropolitan area that would expand the capacity of the existing transportation system. The MPO would have to submit to the Governor and the Secretary a list of highway and transit projects and activities that the MPO has approved for funding in the ensuing period, which could not exceed two years. Federal assistance required for the approved projects and activities could not exceed the amount of federal assistance that is made available for capacity expansion within the metropolitan area for the period—either under section 106 of the Federal-Aid Highway Act of 1991 or sections 3 and 9 of the Federal Transit Act.

When submitting a list of approved projects and activities, the MPO would have to certify to the Secretary that the list (A) was developed in accordance with a continuing, cooperative and comprehensive planning process that the Secretary has found satisfactory under subsection (a)(4) (E) and (B) is consistent with a transportation improvement program that is submitted to the satisfaction of the Secretary under subsection (b)(2).

The Committee bill would prohibit funds under the Federal-Aid Highway Act of 1991 or the Federal Transit Act from being used for any project or activity within a transportation management area unless it is included in the list of projects approved by the MPO. That prohibition would not apply to projects

or activities that (A) are necessary to manage, maintain and preserve existing transportation facilities or operations without adding to the design capacity of such facilities, or (B) are part of a program of investments required to comply with the Americans with Disabilities Act or the Clean Air Act, as amended. Planned projects or activities exempted from MPO approval under this section would still have to be included within a TIP.

Recapture. The Committee bill provides that federal highway and transit funds made available in a transportation management area for project selection by an MPO would remain available for a period of 3 years. If the funds are not obligated within that period, the Secretary would be required to recapture the funds and promptly reallocate them among other states according to the formula for the program under which the funds were made available. Funds would be considered to be obligated if they are reserved to help finance a project for which an application is pending under Section 3 of the Federal Transit Act.

Transfer of funds. Funds made available under the Federal Transit Act that are approved by an MPO for a highway project would have to be transferred promptly to and administered by the Federal Highway Administration, in accordance with the requirements of the Federal-Aid Highway Act of 1991. Funds made available under the Federal-Aid Highway Act that are approved by an MPO for a transit project would have to be transferred promptly to and administered by the Federal Transit Administration in accordance with the requirements of the Federal Transit Act.

Intergovernmental cooperation in planning. The Committee bill includes a provision in existing law that authorizes the Secretary to contract for and make grants to states and local public bodies and their agencies for planning, engineering, designing, and evaluation of public transportation projects, and for other technical studies. Activities assisted under this section could include (1) studies relating to management, operations, capital requirements, and economic feasibility; (2) preparation of engineering and architectural surveys, plans, and specifications; (3) evaluation of previously funded projects; and (4) other similar or related activities preliminary to and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facilities and equipment. A grant of contract under this section would have to be made in accordance with criteria established by the Secretary.

The Committee bill includes another provision in existing law that requires plans and programs under this section to encourage the participation of the private sector to the maximum extent feasible. A metropolitan planning organization would have exclusive responsibility for determining the policies and procedures necessary to carry out this subsection. If a program involves the acquisition of facilities and equipment that are already being used for mass transportation in urban areas, the program would have to provide that the facilities and equipment be so improved (such as through modernization, extension, or addition) that they will better serve the transportation needs of the area.

Funding for planning and project approval. The Committee bill would allocate planning funds to MPOs by formula with adjustments to take account of past levels of federal assistance and differences in responsibilities for planning. State planning funds would be provided as part of a new Section 26 State Program.

Under a basic formula, 80 percent of the funds available to MPOs would be allocated to states in the ratio that the population in urbanized areas, in each state, bears to the total population in urbanized areas, in all the states as shown by the latest available decennial census. No state would receive less than ½ of 1 percent of the total apportioned under this formula. Funds would be allocated to MPOs within the state, by a formula—developed by the State in cooperation with metropolitan planning organizations and approved by the Secretary—that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in section 8 of this Act.

The remaining 20 percent of the funds made available to MPOs would be allocated under a supplemental formula for Transportation Management Areas. These amounts would supplement funding for metropolitan planning organizations in transportation management areas. Such funds would be allocated according to a formula that reflects the additional costs of carrying out planning, programming and project selection responsibilities under this section in such areas.

The Committee bill would ensure that each MPO receives no less under the formula than the amount it received by administrative formula under section 8 of this Act in fiscal year 1991, the Secretary could make a pro rata reduction in other amounts made available to carry out the state and national planning and research program.

The federal share for section 8 activities would be 75 percent except where the Secretary determines that it is in the federal interest not to require a state or local match.

Amendments to Section 9 of the Act

Federal Operating Assistance. The Committee bill does not include the Administration's proposal to eliminate federal operating assistance for urbanized areas over 1 million in population.

The Committee heard compelling testimony that this is perhaps the worst time to eliminate federal operating assistance for the nation's large mass transit systems. Economic recession and rising fuel costs have already forced large systems to raise fares and reduce services. Eliminating federal aid would leave transit systems with the same dismal options since states and localities—caught in a fiscal crisis—could compensate for any loss.

Available evidence indicates that raising fares and/or reducing services would force many transit riders to shift to automobile use and thereby increase traffic congestion, energy consumption, and air pollution—in direct contravention of national objectives. Raising fares and/or reducing services would also place the greatest strain on the limited budgets of those populations (elderly, persons with disabilities, inner city poor) who are transit dependent.

The loss of federal aid would have a devastating effect on individual transit properties.

CTA (Chicago) would lose $40 million in federal operating aid. Fare increases of 15 percent would be needed to compensate for the loss.

SEPTA (Philadelphia) would lose $27 million in federal operating aid. SEPTA estimates that fares would need to rise 15% to offset the loss—causing ridership to fall 3% to 4%.

WMATA (Washington) would lose $16 million in federal operating assistance. WMATA has already announced fare increases of 18% over the next two years and anticipates that ridership on existing lines will fall 5%.

MTA (Baltimore) would lose $10 million in federal operating aid. MTA believes that state funds would need to be diverted from system preservation activities to compensate for the loss.

MARTA (Atlanta) would lose $5.4 million in federal operating aid. MARTA estimates that increasing the fare by 10 cents—the value of the federal aid—would decrease annual ridership by 2.6 million passenger trips. A fare increase would also hinder marketing efforts to encourage auto riders to switch to transit.

The loss of federal aid would also impede compliance with the recently-passed Americans with Disabilities Act. The largest portion of estimated costs under the ADA will be for providing complimentary paratransit service—the demand responsible service required for persons with disabilities whose impairment precludes them from using even accessible transit systems. Experts anticipate that operating costs will rise markedly as transit properties increase their provision of paratransit services.

By all accounts, the elimination of federal operating assistance would exacerbate the already weakened condition of large mass transit systems. It would also impede federal efforts to ensure and encourage compliance with a myriad of national objectives. The Committee has concluded that, in today's fiscal, economic, and regulatory climate, the elimination of federal operating assistance would be a hostile and irresponsible act. The Committee firmly rejects that course of action.

Federal Share. The Committee bill would not include the Administration's proposal to reduce the federal contribution for transit projects: from 80% and 60% for rehabilitation projects and from 75% to 50% for new starts and extensions.

Hearings before this Committee and the Joint Economic Committee have outlined the dire fiscal condition of States and localities. It is highly unlikely that State and local jurisdictions can find the funds to replace any lost federal contribution.

The recession has reduced state and local tax revenue—e.g. real estate and sales taxes—that support mass transit operations. New York City taxes for mass transit alone have fallen by $350 million.

State fiscal conditions are the worst in nearly a decade. Falling revenues and spiraling health-care costs have led to severe budget deficits. States are being forced to take desperate action to balance their budgets—including cutting support for mass transit.

Cities are more troubled. Long term trends—cutbacks in federal aid, increased social problems, economic restructuring, demographic shifts—underlie the current crisis. Financial pressures are nationwide: affecting cities as diverse as New York, Bridgeport and Philadelphia in the Northeast, to New Orleans and Jacksonville in the South, to Detroit in the Midwest and Los Angeles in the West.

The Committee strongly believes that, at a time of fiscal crisis and economic recession, the federal government must continue to play a strong role in the expansion, preservation and operation of mass transit.

Allocations. The Committee bill would make a technical correction to the percentage of funds set-aside for small urbanized

areas and large urbanized areas. Under existing law, the section 18 and section 9 programs are funded as percentage set-asides from one account. The current set-asides are as follows: the section 9 program for large urbanized areas receives 88.43 percent of the total account; the section 9 program for small urbanized areas receives 8.64 percent; and the section 18 program receives 2.93 percent.

The bill would alter the current system by providing for a separate set-aside for rural transit programs. The section 9 set-asides for large urbanized areas and small urbanized areas would, therefore, be proportionally adjusted to reflect this change. Henceforth, the section 9 program for large urbanized areas would receive 91.1 percent of the funds available for section 9; the section 9 program for small urbanized areas would receive 8.9 percent.

Discretionary Transfer of Apportionment. The Committee bill would permit transit funds to be used for highway purposes under certain circumstances. Section 9 formula funds for capacity expansion could be transferred to highway projects only in transportation management areas—metropolitan areas over 250,000 in population or in non-attainment under the Clean Air Act. Rural transit (Section 18), Elderly and Handicapped transit (Section 16(b)(2)) and Discretionary (Section 3) funds would *not* be eligible for transfer to highway projects.

The transfer of section 9 funds would be subject to the approval of the metropolitan planning organization after appropriate notice and comment from affected transit providers. Basic transit activities—including the sound operation and maintenance of existing transit facilities, the management of ongoing transit operations and investments required to comply with the Americans with Disabilities Act or the Clean Air Act—would have to be provided for adequately before transfer of funds could occur.

Transit funds would be eligible for transfer to highway uses only where the source of State or local share funding is available equally for both highway and transit projects. The Secretary would be required to ensure that either sources of State and local matching funds are equally available for highways and transit, or dedicated sources of matching funds are available for highway and transit projects in a way that avoids any bias against local selection of transit projects. The Committee intends to ensure that decisions to transfer transit funds to highway projects are not made on the grounds that dedicated matching funds are available only for highway projects but not for transit projects.

Elimination of Incentive Tier. The Committee bill would eliminate the "incentive tier" provisions of the section 9 bus and rail funding formulas. These provisions use the ratio of passenger miles to total operating expenses to allocate a small portion of formula funds. The incentive factors were introduced in the Surface Transportation Assistance Act of 1982 as a means of weighing and rewarding the operating efficiency of bus and rail systems.

The Administration recommended eliminating the incentive tier for three reasons.

First, the techniques used to collect the passenger mile data are difficult to verify and apply consistently among the nation's transit operators. Passenger mile data are not usually collected by transit systems as part of routine transportation operations, in contrast to other data (e.g. vehicle revenue miles) used in the Section 9 formula. In most instances, passenger mile data are obtained by sampling.

Second, the Administration can find no evidence that application of the incentive factors has induced any change in behavior among the transit operators.

Finally, the overall effect of eliminating the incentive tier would be insignificant. Slight percentage losses in some urbanized areas would, with a few exceptions, be more than offset by the increase in the authorized level for Section 9 funding.

Energy Efficiency. The Committee bill would amend section 9 to prevent a transit recipient that undertakes certain energy efficiency initiatives from losing formula funds. Under existing law, 60% of the Section 9 rail tier pot is allocated on the basis of "fixed guideway revenue vehicle miles". Rail systems have found that this factor has the unanticipated effect of discouraging initiatives that lower energy consumption. A system, for example, that makes energy savings by running shorter trains in off-peak hours would experience a decrease in Section 9 funds due to a decrease in revenue vehicle miles. The decrease would take effect even if the system was still providing the same frequency of revenue service to the same number of riders. The Committee bill would hold harmless those rail systems that demonstrate to the satisfaction of the Secretary the combination of energy savings and continued service described above.

Applicability of Safety Program. The Committee bill would apply Section 22 of the Federal Transit Act, which gives the Secretary investigatory powers to ensure safety in mass transit systems, to the section 9 program. The provision is necessary because of the requirement in section 9(e)(1) that only specified sections of the Federal Transit Act apply to section 9.

Certifications. The Committee bill would make several amendments to simplify the section 9 grant application process—particularly the existing requirements that recipients self-certify their compliance with various statutory mandates. The bill would mandate that all certifications required by law be incorporated into a single document to be submitted annually as part of the Section 9 application. The bill would also require the Secretary to publish an annual list of all required certifications in conjunction with its annual publication—currently required by Section 9(q)—of information outlining the apportionment of Section 9 funds.

Finally, the bill would require the Secretary to establish streamlined procedures to govern a recipient's "continuing control" certification with respect to track and signal equipment. Under existing law, a section 9 recipient is required to certify that it has or will have "satisfactory continuing control" over the use of its facilities and equipment. Transit operators have found that the interpretation of this requirement with respect to track and signal equipment imposes unnecessary administrative burdens on transit recipients.

Program of Projects. The Committee bill would require a recipient, in developing its program of projects, to assure that the program provides for the maximum feasible coordination of public transportation services assisted under the section 9 program with transportation services assisted by other federal sources. A similar provision currently is in Section 18 of the Act.

Continued Assistance for Commuter Rail in Southern Florida. The Committee bill would amend the Surface Transportation and Uniform Relocation Assistance Act of 1987 Act to permit a commuter rail line (Tri-County Rail Authority) in south-eastern Florida to continue to receive federal operating assistance under section 9.

The TCRA commuter line was established as a temporary congestion relief measure during reconstruction of a major interstate in south-eastern Florida. To help meet the operating needs of this commuter line, section 329 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 permitted an increase in the Section 9 operating assistance cap for the urbanized areas of Fort Lauderdale and Miami, Florida. The increased operating assistance was specifically limited to commuter rail service "provided as a maintenance of traffic measure" during the reconstruction period.

The TCRA commuter line has proven to be successful and is expected to continue to operate beyond the completion of the interstate reconstruction. Recognizing the permanent status of the commuter line, this amendment would remove the limitations contained in Section 329 to enable TCRA to continue to receive federal operating assistance.

University Transportation Centers

In general.—In 1987 Congress authorized the University Transportation Centers Program to establish and operate transportation centers in each region of the country. The purpose of the centers is to conduct multi-modal research and training on the transportation of people and goods. A national competition established ten centers with the additional participation of 60 universities nationwide.

Over 313 research projects and 15 advanced institutes were established with the help of Federal funds and match funds. The Centers' unique structure fosters cross-university and inter-disciplinary collaboration. State and private sector participation ensures a focus on applied research and pathways for technology transfer.

The Committee bill would amend the responsibilities of university research to include safety issues. The bill would also establish three new lead university centers to accelerate the participation of minorities and women in transportation related professions. The Secretary would consider the commitment of the university to the enrollment of minorities and women when awarding grants.

Currently, one tenth of our nation's workforce is employed in transportation. The Committee believes these new universities would help to ensure the diversity and technical skill of this large workforce as well as continue critical advances in transportation research.

Rulemaking

Section 12(i) of the Urban Mass Transportation Act was added by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) to ensure that major statements of transit policy would be subject to formal rule-making procedures. The Committee bill would prohibit FTA from issuing policy in Circular form that is not subject to formal review procedures. FTA policy statements would also be distributed more broadly and with more appropriate notice than the Circular process would otherwise provide. Since enactment of this provision, several instances of the Administration's non-compliance with congressional intent have arisen. For example, the Third Party Contracting requirements and Cross-Border Leasing guidelines were issued without Federal Register notice and comment. Additionally, the Administration continues

to enforce several circulars governing major policy issued prior to passage of the 1987 Act which have never undergone public notice and comment. The Committee bill would clarify that all major statements of policy, except emergency rules, routine matters, or matters of insignificant impact, shall be subject to the process described in Section 12(i) of existing statute.

Transfer of Facilities and Equipment

The Committee bill would allow the Secretary to authorize the transfer of facilities and equipment acquired with funds under the Act to any public body for uses other than mass transportation. Under current law, the transfer of excess property for other public uses is difficult and cumbersome. This provision would simplify the process and allow, for example, the transfer of a surplus bus maintenance facility from a transit authority to a public school district.

The transferred facilities or remaining useful life of the equipment and equipment would have to remain in a public purpose use for a minimum of five years. In addition, prior to making any transfer, the Secretary would first have to make a written determination that there are no other mass transit purposes for which the asset should be used; that the benefit of allowing the transfer outweighs liquidation of the asset and return of the Federal financial interest in the asset; and that there is no Federal use for the asset.

The Committee bill would also allow States the flexibility to the transfer facilities and equipment between the Section 18 rural transit program and Section 16(b) program for the elderly and persons with disabilities. Current law does not allow equipment transfers from one program to the other. Since close to 60 percent of the recipients of Section 16(b) funds operate in rural areas, this provision is designed to maximize the use of equipment for both programs. Under this provision a State could, for example, transfer vans purchased with Section 18 funds to the Section 16(b) program and vice versa. The original program use requirements of Section 18 and Section 16(b) would continue to apply to any transferred equipment.

Elderly Persons and Persons with Disabilities

The Committee bill would clarify existing statute by specifying that funds provided under the Section 16(b)(2) program will be allocated to the States, who in turn will distribute funds to eligible private non-profit organizations. States would submit a program of projects to the Secretary for approval as is current practice. The Committee bill would also require an assurance from the state that the state's program of projects provides for the coordination of Section 16(b)(2) transportation services with transportation services assisted from other Federal sources. This provision is designed to encourage more effective coordination and to avoid duplication of service.

The Committee bill would authorize assistance under this program to public bodies that are approved by a State to coordinate transportation services for the elderly and persons with disabilities. This provision is designed to support the efforts of States attempting to coordinate transportation services. For example, Florida has passed a state law that mandates statewide coordination of all transportation services for the disadvantaged. Several of the entities designated by the State to coordinate these activities are public bodies such as county commissions. Although these designated entities must coordinate both funding sources and service provision, current law precludes them from receiving funds under 16(b)(2), thus hindering their ability to fully coordinate these transportation services. Public bodies eligible to receive funding under this section could include, for example, county governments or commissions, county offices on aging, regional planning councils, and metropolitan planning organizations.

The Committee is aware that even with the funding increase for the Section 16(b)(2) program provided by the Committee bill, the capital needs under this program will continue greatly to exceed the available resources. The Committee does not intend to open the Section 16(b)(2) program to public agencies that have access to other transit resources such as the Section 3 and Section 9 programs. The Committee intends that public bodies will use funding under this program in a very narrow circumstance, such as when the public body is approved by the State specifically to coordinate transportation services for the elderly and persons with disabilities. In carrying out this provision, the Committee intends that existing law governing labor protections will continue to apply as appropriate.

The Committee bill would allow the Governor of each State to use any funds that remain unobligated from the Section 16(b)(2) program during the final 90 day period prior to the expiration of the grant to supplement funds distributed under either the Section 18 program or the Section 9 program.

The Committee bill would also require the Secretary to issue regulations to allow recipients of 16(b)(2) funds to lease their equipment to public transit entities. The Committee bill specifies that the regulations shall be issued within 60 days of enactment of the bill.

Human Resources Program Support

The Committee bill would authorize the Secretary to retain any funds returned in connection with section 20 of the Act. Section 20 authorizes the Secretary to make grants or contracts for national or local programs that address human resource needs within public transportation activities. These retained funds would in turn be made available for any human resource activities eligible to be funded under section 20.

Report on Safety Conditions in Mass Transit

The Committee bill would require the Department of Transportation to submit a report to Congress on the safety record of mass transit. The report would include a summary of all passenger-related and employee-related deaths and injuries resulting from unsafe conditions in mass transit facilities. The report would also include a summary of the investigative and remedial actions taken by DOT in accordance with the authority provided by Section 22. Finally, the report would make recommendations concerning any legislative or administrative actions that are necessary to ensure that recipients of federal funds will institute the best means available to correct or eliminate safety hazards.

The Committee directs the Department of Transportation to work closely with the Congress in designing the parameters of this safety study. Some critical design elements of the study (e.g. the time frame to be covered by the study) have been left to future discussions between DOT and by the Committee staff.

The Committee notes that federal safety standards have not been issued for transit programs, leaving this area to State and local control. The Committee believes it is important to assess how effective State and local action has been in protecting transit riders as well as the substantial federal investment in transit facilities and equipment. The DOT study must, therefore, be designed to produce the type of data and information that will assist the Committee in evaluating the effectiveness of current safety measures and programs.

Project Management Oversight

UMTA currently oversees over $33 billion in active grants nationwide. The agency is responsible for ensuring that grantees comply with the UMT Act and uniform grant regulations that apply across the government. These include federal purchasing and contracting standards for recipients of federal funds. In lieu of more direct oversight to ensure compliance, UMTA relies on grantee certification that they comply with all applicable federal requirements. To supplement self-certification and oversee grantees' compliance, UMTA regional offices have a number of monitoring tools including grantee financial and progress reports, site visits, annual audits, and triennial reviews. The 1987 reauthorization act required UMTA to implement the Project Management Oversight (PMO) program. This provision permits UMTA to use up to ½ percent of the funds made available each year to carry out sections 3, 9, 18, Interstate Transfer Projects and the National Capital Transportation Act (authorizing legislation for D.C. Metro) for project management oversight of major capital projects. UMTA currently relies heavily on the use of 12 independent contractors to perform project management oversight of 33 major capital projects. As a condition of receiving federal funding for major capital projects, grantees are required to submit project management plans (PMP) during the grant review process. In addition, each system is required to submit quarterly narrative progress and financial status reports about relevant grant activities once funding is provided.

The Government Accounting Office is currently reviewing UMTA's grants oversight practices. This investigation was prompted by procurement problems at one system studied by GAO and by reports that discretionary grants lacked little if any documentation. Preliminary GAO comments indicate a need for additional grants management oversight.

The Committee bill would increase the percentage of funds reserved for FTA's project management oversight program. The currently ½ percent takedown of funds available under capital grants programs would be increased to ¾ percent. The Committee bill would remove a technical restriction currently limiting the use of "takedown" funds to projects funded under the particular section from which the funds were set aside. Instead, FTA could aggregate all of these funds for use on projects in any of the eligible programs.

The Committee intends that the additional resources provided for project management oversight, as well as the additional resources authorized for administrative expenses, will be used by FTA to improve its oversight activities.

Planning and Research

In General.—Transit research has long been a key element of federal support for public transportation. Section 6—Research and Demonstration was one of the first programs established in the Urban Mass Transportation Act of 1964.

Over the past decade, however, federal support for research has been sharply reduced. According to the Transportation Research Board, in the 1970's, UMTA's annual research budget averaged $60 million, or nearly 1.5% of the industry's gross revenues per year. By fiscal year 1986, transit research obligations were approximately $22 million, barely more than one-fifth of 1 percent of estimated industry revenues of $10 billion. The private sector, by contrast, generally devotes 2.8 percent of its revenues to research.

While transit research spending has decreased, the Highway program has increased its research spending. The enactment of the Clean Air Act Amendments, the Americans with Disabilities Act and a reemphasis on safety issues, further increases the demand for mass transit research and planning.

The Committee has attempted to address this urgent need in several ways. The Committee bill would add a new planning and research program—section 26—to the Act. The Committee bill would provide sufficient funding and flexibility to ensure that research results are translated into practice when applicable. The bill folds funding for section 6—research and demonstration, section 8—planning (state planning funds only), section 10—training grants, section 11(a)—university research, and section 20—human resource programs into state and national planning and research programs. Combining program funding would facilitate the provision of training and technical assistance to ensure widespread implementation of workable products and services.

Funding. The bill would set aside 3% of the total mass appropriations for research and *planning*. This action would ensure funding stability and predictability for long-term research and planning projects. Half of the 3% set aside of appropriated funds would be used to establish the state and national planning and research programs. This level of funding for the state and national programs would parallel the highway research program which is also 1.5% of that program's total appropriations. As described above, the other half of the 3% set aside would be used to fund local planning organizations and the Rural Transportation Assistance Program.

State Program. The state program would consist of a new transit cooperative research program designed to address research priorities as determined by public transportation operators, suppliers and others involved in the mass transportation industry. The program is based upon the recommendations of the 1987 report by the Transportation Research Board entitled "Research for Public Transit—New Directions" and is similar to the successful Strategic Highway Research Program (SHRP) established under the Federal Aid Highway Act of 1987. The Transit Cooperative Research Program would focus on identifying and evaluating practical solutions to everyday problems experienced in the operating environment. A governing board would be established through the Transportation Development Corporation. A majority of the board would represent public operators of transportation service. Program management, project implementation and technical support to the board would be provided by the National Academy of Sciences under a cooperative agreement with the Secretary.

The remainder of the state program allocation would be made available to the States on the basis of population for research, training, planning, human resource support and demonstration projects. No state would receive less than one-half of one percent of these allocations. Although the local Metropolitan Planning Organizations would receive their funds as a separate percentage of the total set aside for research and planning, states could use state program funds to supplement the metropolitan planning organizations as well as the transit cooperative research program.

National Program. The national planning and research program would authorize the Secretary to make grants and contracts in accordance with already established research, training and planning sections of the Act.

The Committee bill would require the Secretary to make available a minimum of $2,000,000 per year for the authorization period to provide transit-related technical assistance, demonstration programs, research development, public education and other activities to assist transit providers with the implementation of the Americans with Disabilities Act.

The Committee bill would also require the Secretary, to the extent practicable, to contract with a national non-profit organization with demonstrated capacity to carry out this activity.

The Committee is aware that a program similar in nature to the one contemplated by the Committee bill received funding in fiscal years 1988–1990. The program, Project ACTION (Accessible Community Transportation in Our Nation), was administered by the National Easter Seal Society through a cooperative agreement with UMTA. Project ACTION was designed to improve relations between the transit and the disability communities and to facilitate the development of cooperative tools and techniques for improved access to mass transportation for persons with disabilities.

The Committee believes that the experiences of Project ACTION over the last three years and its demonstrated capacity to develop tools and techniques which help to improve transportation services for persons with disabilities should serve as a model to the Secretary in establishing the program required by the Committee bill.

The National Program would allow the Secretary expedited processing of non-renewable grants less than $100,000 provided these grants are in compliance with labor provisions of the Act.

The Committee is aware of a recent General Accounting Office report (GAO, December, 1989) which noted the need for a more systematic and stable technical assistance program to encourage low-cost traffic management techniques. The Committee believes that the National Program should place a high priority on providing comprehensive research and technical assistance to encourage transportation demand management. To the extent practicable, these efforts should be coordinated with related efforts pursuant to section 108 of the Clean Air Act Amendments of 1990.

The Committee bill would also clarify the purposes of the national research and planning program by establishing a technology development program to focus on incremental improvements to existing technology as well as effective cost sharing programs.

Technical accounting provisions

The Committee bill would make a technical amendment to correct certain administrative difficulties resulting from current accounting and Department of Treasury practices. Older, unobligated appropriations would be merged into the current appropriation for the particular activity. This provision would not affect in any way the availability of funds involved.

GAO REPORT ON CHARTER SERVICE REGULATIONS

The Committee bill would require the General Accounting Office to analyze the impact of the existing charter service regulations on the ability of communities to meet their local transportation needs.

The Committee has mandated this study in response to persistent criticisms of the existing regulations. Prior to 1987, public transit properties were permitted to operate limited charter bus services. These services had to be incidental to the provision of regular mass transit services and were only to be operated within the transit system's service area. As part of the Reagan Administration's "privatization" policies, UMTA issued regulations in 1987 and 1988 establishing a general prohibition on the use of UMTA funded equipment and facilities in charter service operations. Although the regulations establish a number of exceptions to the general prohibition (e.g. permitting incidental charter service where no private charter operator is determined to be "willing or able" to provide the service), transit operators claim that the regulations represent a marked departure from prior practice and significantly impede the ability of communities to meet local transportation needs.

Transit operators specifically contend that the regulations: (1) reduce the quality and quantity of transportation services available to the public; (2) prevent productive and efficient use of federally subsidized equipment and facilities; (3) make the cost of service prohibitively expensive in areas where private charters are located at a great distance from communities requiring service; (4) force community groups to pay noncompetitive rates for service; (5) diminish the ability of public operators to generate community support for transit; (6) impede the ability of local governments to carry out economic development activities; and (7) allow private operators to financially benefit from the use of federally-subsidized vehicles under agreements with public operators where the public operators provide service and the private carrier acts as a broker.

The Committee is concerned that the current regulations may prevent communities from meeting local transportation needs in the most cost efficient and effective manner possible. The Committee believes that a GAO study will provide Congress with objective information on the impact of the charter service regulations and help Congress determine whether the regulations are in need of modification. The GAO would be specifically instructed to examine the impact of the charter service regulations in at least three communities. The Committee recommends that the Comptroller General include a community in the state of Michigan as one of the communities to be analyzed.

GAO STUDY ON PUBLIC TRANSIT NEEDS

The Committee bill would require the General Accounting Office, on a biennial basis, to submit a report to Congress that evaluates the extent to which the nation's transit needs are being adequately addressed. The report would include (1) an analysis of the unmet needs for transit; (2) a projection of the maintenance and modernization needs that will accrue over the coming five years as existing transit equipment and facilities deteriorate; and (3) a projection of the need to invest in additional transit facilities over the coming five years to meet changing economic, commuter and residential patterns.

The report would also estimate (1) the cost of meeting the needs identified above; (2) the public and private resources that will be available to support public transit; and (3) the gap between transit needs and resources.

The Committee strongly believes that the existing sources of information on transit need are inadequate. It is difficult to determine the level of investment required to maintain, modernize and expand our transit infrastructure. A biennial GAO report would provide Congress with an independent analysis of transit need and provide an objective benchmark for determining whether the nation is adequately investing in its transit infrastructure.

TECHNICAL AMENDMENT TO SECTION 9B

The Committee bill would make a technical amendment to the wording of Section 9B of the Urban Mass Transportation Act to conform with other changes proposed in this bill. Section 9B, as currently written, makes reference to authorization provisions enacted by the Surface Transportation and Uniform Relocation Assistance Act of 1987. Those provisions have been amended by section 35 of this Act.

Use of Census Data.—Under current law, all UMTA formula programs use population statistics from the most recently available Federal Census. The Committee bill would require transit programs, where practicable, to utilize more recently available population statistics.

The Committee bill would require that interim population estimates provided by the Secretary of Commerce be used to distribute funds under Section 18 and Section 9 for small urbanized areas. Funds are allocated under these two programs to the state on the basis of the rural or urbanized population in that state. The Secretary of Commerce provides interim estimates of such population distributions on a biannual basis. The formulas for Section 18 and Section 9 for small urbanized areas would be updated every four years so that communities could retain more predictability in planning the use of their formula allocations.

The Committee bill would not require interim formula updates for Section 9 for large urbanized areas because the appropriate data can not be made available. Section 9 funds for areas of population over 250,000 are allocated directly to the urbanized areas. Department of Commerce interim population estimates are available for metropolitan statistical areas, which are defined by entire counties. Urbanized areas are defined on a "block by block" basis and do not necessarily conform to any governmental boundary or jurisdiction. The Commerce Department is, therefore, unable to make interim population estimates based on local governmental data for urbanized areas.

The Committee bill would also require the Secretary to use data from the 1990 census, to the extent practicable, in determining the allocation of funds under Section 9, Section 16(b)(2) and Section 18 for fiscal year 1992. The Secretary of Transportation and the Secretary of Commerce would be required to coordinate efforts to expedite the availability of census data in a form that is appropriate for the transit program formulas. The Secretary of Transportation must notify the Congressional authorizing Committees of actions taken under this section within 9 months of enactment of the Federal Transit Act.

The Secretary of Commerce will make a determination on July 15, 1991 whether or not to make statistical adjustments in the Census data to reflect undercounts and overcounts. The Bureau of the Census projects that population data will be available prior to the beginning of fiscal year 1992, regardless of whether or not statistical adjustments are calculated.

Buy America

The Committee chose not to amend section 165 of the Surface Transportation Assistance Act of 1982 to allow the President to waive the Buy America provisions when another country also agreed to relax certain of its restrictive provisions.

The waiver authority was included in the proposal submitted by the Administration. The Committee believes that the Administration already possesses the necessary waiver authority pursuant to the United States-Canada Free Trade Agreement Implementation Act of 1988, as well as the Omnibus Trade and Competitiveness Act of 1988.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. This title would be referred to as the "Federal Transit Act of 1991".

Sec. 2. The Agency Name. The name of the Urban Mass Transportation Administration would be changed to "Federal Transit Administration".

Sec. 3. Amendment to short title of the 1964 Act. The name of the underlying law would be changed from the "Urban Mass Transportation Act of 1964" to the "Federal Transit Act".

Sec. 4. Amendment to Findings and Purposes. This section would amend Section 2(a) of the Federal Transit Act (FT Act) to add a new finding that a significant improvement in public transportation is necessary to achieve national goals for improved air quality, energy conservation, international competitiveness and mobility for the elderly, persons with disabilities and the economically disadvantaged in urban and rural areas of the country.

This section would also amend Section 2(b) to state that an objective of the Act will be to provide State and local governments with the financial resources to help implement the national goals related to improve air quality, international competitiveness and mobility for the elderly, persons with disabilities and economically disadvantaged persons.

Sec. 5. Commute-to-Work Benefits. This section would assert Congressional findings regarding commute-to-work benefits. Although employers may provide unlimited tax-exempt parking benefits to employees, transit and vanpool benefits are limited to $15 per month. If benefits exceed $15 per month, then the entire amount of benefits (including the first $15) becomes taxable. This tax policy is inconsistent with other national objectives including the need to conserve energy, reduce reliance on energy imports, lessen congestion and reduce air pollution. This section would affirm the need to provide equal commute-to-work benefits to transit.

Sec. 6. Capital Grant or Loan Program. The section would rename section 3 of the Urban Mass Transportation Act of 1964 to read "Capital Grant or Loan Program" rather than "Discretionary Grant or Loan Program."

Sec. 7. Capital Grants—technical amendment to provide for early systems work contracts and full funding grant contracts. The bill amends Section 3 of the FT Act to authorize the Secretary to enter into full funding contracts and early systems work agreements with applicants to provide for more efficiency project management.

A full funding contract would be designed to (1) establish the terms and conditions of federal financial participation in a project under this section, (2) establish the maximum amount of federal financial obligation for the project, and (3) facilitate timely and efficient management of the project in accordance with federal law. Budget authority obligated by a full funding contract would be limited by the amount made available in the law for obligation. A contract could either obligate the full amount reported for the project, it could obligate a portion of that amount with a commitment, contingent only upon the future availability of budget authority provided for the relevant program, to obligate additional amounts from budget authority that is made available in law for future years. Budget authority obligated in the future pursuant to a contingent commitment would be limited to amounts specified in law in advance for eligible projects. The total of amounts stipulated in a contract for a fixed guideway project would have to be sufficient to complete not less than an operable segment. Any interest and other financing costs of efficiently carrying out a project or a portion of a project pursuant to a full funding contract would be considered an eligible project cost under the contract, provided that eligible financing costs could not exceed the costs of the most favorable financing terms reasonably available for the project at the time of borrowing.

An early systems work agreement would permit a grantee to proceed with procurement of land, long-lead-time system elements for which specifications are determined, and other activities that are appropriate to avoid delays or other inefficiencies in project management that would increase overall project costs. The Secretary could only enter into an early systems work agreement if a record of decision pursuant to the National Environmental Policy Act of 1969 (NEPA) has been issued on the project and the Secretary determines there is reason to believe (1) a full funding contract will be entered into for the project and (2) the terms of the early systems work agreement will promote ultimate completion of the project more rapidly and at less cost. An early systems work agreement would obligate an amount of available budget authority and would provide for reimbursement of preliminary costs of project implementation specified in the agreement, which could include land acquisition, timely procurement of system elements for which specifications are determined, and other activities that the Secretary determines to be appropriate to facilitate efficient, long-term project management. The Secretary would establish in the agreement the effective date after which local costs are eligible for federal reimbursement, and such date could be prior to compliance with NEPA so long as local costs incurred otherwise meet relevant federal requirements. Any interest or other financing costs of carrying out the early systems work agreement efficiently would be considered eligible project costs, except that eligible financing costs could not exceed costs of the most favorable financing terms reasonably available for the project at the time of borrowing. If an applicant failed to implement the project for reasons within the applicant's control, the applicant would be required to repay all federal payments made under the early systems work agreement plus reasonable interest and penalty charges as specified in the agreement.

Limitation on letters of intent and contingent commitments. The bill would limit the total value of outstanding letters of intent and

contingent commitments included in full funding contracts to (1) the total amount authorized, either as contract authority or as an authorization of appropriations, to carry out the relevant program under Section 3 or (2) 50 percent of the uncommitted cash balance remaining in the Transit Account of the Highway Trust Fund (which includes the amounts received from taxes and interest earned in excess of amounts that have been previously obligated), whichever is greater. Such commitments could be made for new starts, rail modernization or bus projects. The commitment cap related to the Trust Fund balance would not be split by program category.

Sec. 8. Section 3 Program—Allocations. This section would require the Secretary to allocate Section 3 grant funds in the following way: 40 percent for rail modernization; 40 percent for construction of new fixed guideway systems and extensions to fixed guideway systems; and 20 percent for the replacement, rehabilitation and purchase of buses and related equipment and the construction of bus-related facilities.

Sec. 9. Section 3 Program—Rail Modernization Formula. This section would establish a three-tier distribution system for the allocation of rail modernization funds. The new statutory formula would balance the competing needs and claims of historic and "new" fixed guideway systems. The formula would work as follows:

Tier One—Hold Harmless for Historic Rail Systems. In a given fiscal year, the ten historic systems would receive all the funds up to an appropriation of $455 million, the amount appropriated in fiscal year 1991. The ten historic systems would include those systems that (1) have received rail modernization funding in at least two of the five fiscal years 1986-1990; and (2) received in fiscal year 1991 at least 0.5 percent of the funding made available under the Section 9 rail tier. Systems qualifying under this definition include: Boston, Chicago, Cleveland, Maryland commuter rail, New York City, Northeastern New Jersey, Philadelphia, Pittsburgh, San Francisco and Southwest Connecticut.

Funds would be distributed as follows:

41 percent of the total "hold harmless" amount would be set aside for New York and Southwest Connecticut. These funds would be further divided so that New York would receive 35 percent of the total amount and Southwest Connecticut would receive 6 percent.

2 percent of the total amount would also be set aside for Pittsburgh. The remainder of the funds would be distributed primarily on an historic share basis, recognizing in a fair and equitable manner the proportion that each historic system received under the program. Each remaining historic system would generally receive, on an annual basis, the higher of (a) its 3-year share (i.e. averaging funds received from fiscal years 1988 through 1990) or (b) its 7-year share (i.e. averaging funds received from fiscal years 1984 through 1990). The Secretary would make such pro rata adjustments as are necessary in applying this allocation. Each of these systems would be assured, at a minimum, the amount it would have received under the Section 9 rail tier formula.

Tier Two—50/50 Allocation between Historic Rail Systems and "New" Fixed Guideway Systems. The first $70 million in appropriations above $455 million would be divided on a 50/50 basis between the historic rail systems and those "new" fixed guideway systems experiencing substantial modernization needs—those systems in revenue service for at least ten years. These excess funds would be distributed by the factors contained under the Section 9 rail tier formula.

Tier Three—Distribution By Section 9 Formula. All amounts appropriated in excess of $525 million would be distributed to all historic rail systems and eligible "new" fixed guideway systems by the factors contained under the Section 9 rail tier formula.

Ineligible Systems—Secretary Discretion. The Secretary would have the discretion to permit ineligible fixed guideway systems—those that have not been in revenue service for at least ten years—to participate in the formula program where such systems demonstrate that they have modernization needs that cannot adequately be met by section 9 funding.

Apportionment. In a given fiscal year, the Secretary would be required to apportion rail modernization funds—based on both authorized and appropriations levels—within specified time periods. The Secretary would also be required to publish such apportionments for each program participant within the specified time periods.

Sec. 10. Section 3 Program—Local Share. This section would clarify the existing statutory requirement that 25 percent of the cost of a project approved under section 3 be provided from non-federal sources. The section would permit the costs of rolling stock purchased prior to the approval of a section 3 application to satisfy the non-federal share requirement if (1) the stock was purchased with no federal assistance, (2) the stock would not have been purchased except for its planned use on an extension eligible for Section 3 assistance, and (3) the stock is to be used on the extension for which the Section 3 application is being submitted.

Sec. 11. Section 3—Grandfathered Jurisdictions. This section would clarify that all existing of intent, full funding grant agreements and letter of commitment will remain in effect with passage of this Act.

Sec. 12. Capital Grants—Innovative Techniques and Practices. The eligible activities under the section 3 discretionary program would be expanded to include projects that introduce innovative techniques and methods to public transportation. This change merely codifies existing statute by incorporating language from section 4(i) into section 3.

Sec. 13. Capital Grants—Elderly and Persons with Disabilities. This section would amend Section 3 of the Act to allow public transit agencies to apply for capital funding under the Section 3 grant program for transportation projects that are specifically designed to meet the needs of elderly persons and persons with disabilities.

While current law provides for the rights of elderly and disabled persons to use mass transit, the recently enacted Americans with Disabilities Act of 1990 imposes requirements on transit providers that are more stringent than current law and as a consequence, more costly. This section would provide public transit agencies with a mechanism to help address the major capital costs associated with ADA compliance.

Sec. 14. Advance Construction. Technical amendment related to interest cost. The bill would amend Section 3(1) to make the advance construction mechanism more workable by deleting language that requires grantees to bet on future inflation. The bill substitutes the requirement that operators obtain the most favorable interest terms reasonably available for the project at the time of borrowing.

Sec. 15. Criteria for New Starts. This section would modify existing criteria for new starts. The project evaluation process would be revised to ensure that the project's social, environmental and economic impacts are also given appropriate consideration. Cost-effectiveness measures used in rating projects for selection would have to be adjusted for inflation and to reflect regional differences in land, construction and operating costs. To meet the criterion for local financial capacity, a designated recipient would be required to have reasonable contingency funds available to cover unanticipated project cost overruns: have stable, reliable and available funding sources for the duration of the project timetable; and maintain transit service at existing levels. Determinations of the stability, reliability and availability of local funding sources would be based on existing grant commitments; the degree to which funding sources are dedicated to the project; and any debt obligations which exist or are proposed to fund the project or other transit activities.

The Section 3(i) new starts criteria and the limitation of project development to one corridor at a time would not apply to a project if (a) assistance sought under Section 3 is less than $25 million or 30% of the total costs of the project or an interrelated programs of projects or (b) a project serves as a transportation control measure necessary to carry out an approved State Implementation Plan in extreme or severe non-attainment areas. The Secretary would be required to expedite the UMTA project review process for projects that are transportation control measures necessary to carry out an approved State Implementation Plan in serious, moderate or marginal non-attainment areas.

Sec. 16. Advance Construction. Technical amendment related to interest cost. The bill would amend Section 3(1) to make the advance construction mechanism more workable by deleting language that requires grantees to bet on future inflation. The bill substitutes the requirement that operators obtain the most favorable interest terms reasonably available for the project at the time of borrowing.

Sec. 17. Federal Share for ADA and Clean Air Act Compliance. This section would establish a higher federal match for those projects funded under sections 3, 9, 16(b), and 18 that involve the acquisition of bus-related equipment (e.g. lift equipment, particulate traps) or the construction of facilities (e.g. alternative fuels facilities) required by the Clean Air Act Amendments of 1990 or the Americans with Disabilities Act. The federal match would be set at 90 percent of the cost of such equipment or facilities. The Secretary would determine the portion or portions of a project eligible for the higher federal match.

Sec. 18. Section 9 Formula Grant Program-Discretionary Transfer of Apportionment. This section would amend Section 9 of the FT Act to permit a transfer of transit funds to highway use under certain circumstances. This is comparable to amendments to the Federal-Aid Highway Act that would permit highway funds to be used for transit projects.

Subsection (a) would amend section 9(j)(1) of the FT Act to provide that, in a transportation management area, formula grants for construction projects could also be used for highway projects; provided that (i) such use is approved by the metropolitan planning organization in accordance with section 8(c) after appropriate notice and opportunity for comment and appeal is provided to affected transit providers and (ii) adequate provision is first made for sound operation of existing

transit facilities, maintenance of such facilities and their carrying capacity, management of ongoing transit operations, and any program of investments required to comply with the Americans with Disabilities Act or the Clean Air Act as amended.

Subsection (b) would add a new provision to subsection (j) of the FT Act, which would permit Section 9 construction funds to be used for a highway project only if (i) funds for the State or local government share of the project are eligible to fund either highway or transit projects, or (ii) the Secretary finds that State or local law provides a dedicated source of sufficient funding available to fund local transit projects.

Sec. 19. Comprehensive Transportation Strategies. This section amends Section 8 of the FT Act of reform the current transportation planning process to give more attention to intermodal solutions and to give metropolitan planning organizations (MPOs) in certain areas clearer responsibilities for approving projects. It is designed to make few significant changes in current practice for areas that are less densely populated and that do not have problems with air pollution.

Subsection (a) requires the development of comprehensive metropolitan transportation strategies by metropolitan planning organizations.

In general. The subsection declares it to be in the national interest to encourage and promote the development of transportation systems that integrate various modes of transportation and efficiently maximize mobility of people and goods within and through metropolitan areas and minimize transportation-related fuel consumption and air pollution. The Secretary is required to cooperate with state and local elected officials in metropolitan areas in the development of comprehensive transportation strategies for achieving this objective.

Metropolitan Planning Organizations. The subsection requires that an MPO be designated for each urbanized area of more than 50,000 in population, as under existing law. The MPO structure would be determined by agreement among the Governor and units of general purpose local government representing at least 75 percent of the affected population, including the central city or cities, as defined by the Bureau of the Census. If an MPO is in a metropolitan area that (1) has population over 250,000, (2) is in non-compliance under the Clean Air Act, or (3) is otherwise eligible for designation as a "transportation management area" as noted below, the MPO will have to include local elected officials, officials of agencies that administer or operate major modes of transportation in the metropolitan area (including, at a minimum, all transportation agencies that were included as of June 1, 1991), and appropriate state officials. For purposes of this section, the term "metropolitan area" means an area for which one metropolitan planning organization is responsible.

Once an MPO is designated, whether under this or earlier provisions of law, the designation shall remain in effect until revoked either by agreement among the Governor and the local governments or by other state or local procedures. To accommodate the new responsibilities conferred under the bill, this subsection would permit MPO's to be reorganized and redesignated at any time by agreement among the Governor and local governments representing at least 75 percent of the metropolitan area's population, including the central city or cities, as defined by the Bureau of the Census. The bill requires that an MPO be redesignated within a period of 12 months if the Secretary designates the metropolitan area to be a transportation management area. The Secretary is required to establish appropriate procedures and timetables for MPOs to comply with membership requirements and other provisions in law.

When an MPO is designated or reorganized, each Governor is required to ensure that the MPO is structured to (1) give balanced assessment to all modes of transportation, including roadway and public transit facilities, (2) give full consideration to the need for mobility of people and goods into and through central cities within the metropolitan area, and (3) otherwise carry out the MPO's responsibilities under federal law. The Governor shall certify to the Secretary that the requirements of the previous sentence have been met.

Transportation Management Areas. Certain metropolitan areas will be designated to be "transportation management areas", within which the MPO will have expanded responsibilities for planning and projects selection. Transportation management areas would include all metropolitan areas that have greater than 250,000 population, or are nonattainment areas under the Clean Air Act, as amended. The Secretary is required to publish and annually update a list of metropolitan areas that meet those criteria. The Secretary may also designate additional transportation management areas at the request of the Governor and MPO. Such additional metropolitan areas may include ecologically fragile areas of national significance that are expected to be significantly affected by transportation decisions. This would permit local officials in ecologically important areas with smaller populations, such as the Lake Tahoe area in California and Nevada, to have the direct authority they need to carry out a comprehensive, long-range transportation strategy that integrates all modes. The designation of a transportation management area shall remain in effect until revoked by the Secretary. The MPO in a transportation management area is required to carry out a continuing, cooperative and comprehensive transportation planning and programming process in cooperation with the state and transit operators. The bill gives such MPOs additional authority and responsibility.

To provide for an orderly implementation of intermodal planning and programming in transportation management areas, the bill provides a transition period. The Secretary would be required to achieve the designation of not less than a minimum number of transportation management areas in each of the next 5 years: by the end of the first year after enactment, 20 percent of the eligible metropolitan areas would have to be designated; by the end of the second year, 40 percent; by the end of the third year, 60 percent; by the end of the fourth year, 80 percent; and all such areas would have to be designated in the fifth year. The bill makes it clear that the Secretary is responsible for exceeding the minimum percentages required for designation. Although the Secretary can make adjustments for compelling local circumstances, the Secretary is expected to begin with designation of metropolitan areas that have the most severe problems of air quality and traffic congestion. The Committee expects that priority would also be given to metropolitan areas where the MPO is well organized to comply with the requirements of this section and requests such designation. The Secretary would be required to designate all nonattainment areas that are classified under the Clean Air Act, as amended, to be "moderate", "serious", "severe" or "extreme" nonattainment areas for ozone or "serious" nonattainment areas for carbon monoxide within 2 years after the date of enactment of this section.

Metropolitan Area Boundaries. The boundaries of a metropolitan area would be determined by agreement between the MPO and the Governor. To provide for comprehensive, long-range transportation planning, each metropolitan area would have to include at least the existing urbanized area and the contiguous area that can reasonably be expected to be urbanized within the subsequent twenty year period.

The bill makes provision for metropolitan statistical areas that are so large or complex that one MPO would be too unwieldy. The bill, however, would discourage the break up of MPOs that have already been formed. This subsection permits more than one MPO to be designated within a metropolitan statistical area, as defined by the Bureau of the Census, only if the area had more than one designated MPO on January 1, 1991 and the Secretary determines that more than one MPO is needed because of the size and complexity of the area. The bill authorizes the Secretary to require consolidation of MPOs in a metropolitan statistical area if the Secretary does not find that more than one MPO is needed for coherent regional transportation decision making. If more than one MPO is needed, the bill requires that appropriate provision be made to coordinate the metropolitan transportation strategies of all MPOs within the metropolitan statistical area.

The bill requires all areas that are in noncompliance under the Clean Air Act, as amended, to be included within the boundaries of the appropriate MPO's metropolitan area. An appropriate metropolitan area would also have to include any area that the Governor and MPO determine are likely to be significantly affected by air pollution within the foreseeable future, as determined by the Secretary. If more than one MPO has authority within a non-attainment area, appropriate provision would have to be made to coordinate the metropolitan transportation strategies within the whole non-attainment area.

The bill would foster coordination of transportation strategies across multi-state areas. The Secretary would have to establish requirements to encourage Governors and MPOs with responsibility for a portion of a multi-state Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA) to provide coordinated transportation planning for the entire MSA or CMSA.

The bill would give States consent to enter into interstate agreements or compacts that are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section.

Development of Transportation Strategy. The bill would require each MPO to prepare and update periodically a metropolitan transportation strategy for its metropolitan area. The Secretary would establish procedures according to which the strategy would be prepared. In developing the strategy, the MPO would be required to consider the environmental, energy, land use, and other regional effects of all transportation projects to be undertaken within the metropolitan area, without regard to funding source.

Each MPO would have to publish the strategy or otherwise make it readily available for public review. The MPO would also have

to submit the strategy to the Governor for information purposes. The Secretary would have to establish dates and procedures for the publication and submission of strategies.

In Clean Air Act non-attainment areas for transportation-related pollutants, an MPO would be required to coordinate the development of a metropolitan transportation strategy with the development of transportation measures of the State Implementation Plan required by the Clean Air Act.

Each MPO would be required to provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation and other interested parties with a reasonable opportunity to participate in the development of the strategy.

The Secretary would have to assure that each MPO is carrying out its responsibilities under applicable provisions of federal law. At least every three years, the Secretary would be required to provide certification to those MPOs that are complying with requirements of federal law. If the Secretary finds, after reasonable notice and opportunity for hearing, that an MPO is not carrying out its responsibilities under applicable provisions of federal law, the Secretary would have to deny certification. In that case, and until satisfactory corrective action is taken, the Secretary may suspend or disapprove in whole or in part the expenditure within the metropolitan area of funds made available under the Federal-Aid Highway Act of 1991 or the Federal Transit Act. The Secretary would be specifically prohibited from (1) withholding certification of an MPO on the basis of the MPO's policies and criteria for determining the feasibility of private sector participation in accordance with section 8(e) or (2) otherwise impeding an MPO's implementation of such policies and criteria.

Contents of Strategy. A metropolitan transportation strategy would be in a form that the Secretary deems appropriate. At a minimum, a strategy would:

(A) Identify transportation facilities (including major raodways, mass transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions, such as (i) moving goods within the metropolitan area and among distant markets, (ii) enabling people to move quickly to and from home, jobs and other destinations, and (iii) connecting complementary modes of transportation (such as highways, transit systems, ports, railroads and airlines);

(B) assess major demands on the metropolitan transportation system, projected over the subsequent 20 year period;

(C) set forth a long-range strategy for meeting metropolitan area personal mobility and goods transportation needs, including state and local actions to manage travel demand, improve transportation operations and management, increase the efficiency and effectiveness of existing facilities, or provide new transportation capacity;

(D) explain how proposed transportation decisions will (i) achieve compliance with applicable requirements of the Clean Air Act, as amended, the Clean Water Act and other environmental and resource conservation laws, (ii) further applicable federal, state and local energy conservation programs, goals and objectives and (iii) affect other important social, economic and environmental objectives of the metropolitan area as reflected in publicly adopted plans, such as those concerning housing, community development, and historic preservation;

(E) explain (i) the extent to which state and local policies regarding land use and transportation will affect metropolitan-wide mobility, and (ii) how proposed transportation decisions will affect future travel demand, growth in vehicle use, mobile source emissions, and land use and development, taking into consideration the provisions of all applicable short-term and long-term land use and development plans;

(F) include a financial plan showing how the metropolitan transportation strategy can be implemented, which plan shall indicate resources from all sources that are reasonably expected to be made available to carry out the strategy, and recommend any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls, and congestion pricing;

(G) project capital investment and other measures necessary to (i) ensure the preservation of the existing metropolitan transportation system, including requirements for operations, resurfacing, restoration and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization and rehabilitation of existing and future public transit facilities and (ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods; and

(H) indicate any proposed transportation enhancement activities, as defined in the Clean Air Act.

For metropolitan areas that are not transportation management areas, the bill would permit the Secretary to provide for abbreviated strategies appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems, including transportation related air quality problems, in such areas. The state would be required to develop a state-wide transportation strategy that takes into account the transportation needs of areas for which no MPO has been designated.

Subsection (b) of the bill establishes requirements for transportation improvement programs.

Development of programs. The MPO, in cooperation with the state and relevant transit operators, would be required to develop and submit to the Secretary for review a transportation improvement program for the ensuing period of not less than 3 years and, to the extent practicable, for subsequent periods of not less than 3 years. The program would have to include all projects within the metropolitan area that are proposed for funding pursuant to the Federal-Aid Highway Act of 1991 and the Federal Transit Act. The program would have to conform with the approved metropolitan transportation strategy and the State Implementation Plan required under the Clean Air Act, as amended. The program would have to include a project, or an identified phase of a project, only if full funding for such project or project phase can reasonably be anticipated to be available within the period of time contemplated for completion of the project. In the case of a major project to expand the transportation capacity, an appropriate range of alternatives would have to have been analyzed in accordance with the National Environmental Policy Act.

Periodic review and revision. The bill would require the MPO to update or reapprove the program annually, although the Secretary could permit less frequent updating for areas that are not designated to be transportation management areas. An MPO would be able to amend the program at any time, provided that the amendment is consistent with the metropolitan transportation strategy.

Notice and Comment. Prior to approving a transportation improvement program, an MPO would be required to provide citizens, affected public agencies representatives of transportation agency employees, private providers of transportation and other interested parties with reasonable notice of, and opportunity to comment on, the proposed program.

Priority Projects. The program would have to identify priority projects reflecting projected funding and the objectives of the metropolitan transportation strategy that shall be carried out for each relevant programming period.

State programs. The Governor shall, for areas for which no MPO has been designated, develop and submit to the Secretary a transportation improvement program (TIP) covering a period of not less than 3 years. The State TIP would have to be in a form acceptable to the Secretary and include projects proposed for funding in both metropolitan and non-metropolitan areas under the bridge and interstate assistance programs of the Federal-Aid Highway Act of 1991.

Subsection (c) gives MPOs within transportation management areas the authority to approve funding of projects that expand the capacity of the transportation system.

Approval of projects. For projects within a transportation management area, the MPO would submit to the Governor and the Secretary a list of highway and transit projects and activities that the MPO has approved for funding in the ensuing period, which could not exceed two years. Federal assistance required for the approved projects and activities could not exceed the amount of federal assistance that is made available for capacity expansion within the metropolitan area for the period—either under section 106 of the Federal-Aid Highway Act of 1991 or sections 3 and 9 of the Federal Transit Act. When submitting a list of approved projects and activities, the MPO would have to certify to the Secretary that the list (A) was developed in accordance with a continuing, cooperative and comprehensive planning process that the Secretary has found satisfactory under subsection (a)(4)(E) and (B) is consistent with a transportation improvement program that is submitted to the satisfaction of the Secretary under subsection (b)(2).

Funds under the Federal-Aid Highway Act of 1991 or the Federal Transit Act could not be used for any project or activity within a transportation management area unless it is included in the list of projects approved by the MPO.

The prohibition in the previous sentence would not apply to projects or activities that (A) are necessary to manage, maintain and preserve existing transportation facilities or operations without adding to the design capacity of such facilities, or (B) are part of a program of investments required to comply with the Americans with Disabilities Act or the Clean Air Act, as amended. Planned projects or activities exempted from MPO approval under this section would still have to be included within a TIP.

Recapture. The bill provides that federal highway and transit funds made available in a transportation management area for project selection by an MPO would remain available for a period of 3 years. If they are not obligated within that period, the Secretary would be required to recapture the funds and promptly reallocate them among other states according to the formula for the

program under which the funds were made available. Funds would be considered to be obligated if they are reserved to help finance a project for which an application is pending under Section 3 of the Federal Transit Act.

Transfer of funds. Funds made available under the Federal Transit Act that are approved by an MPO for a highway project would have to be transferred promptly to and administered by the Federal Highway Administration, in accordance with the requirements of the Federal-Aid Highway Act of 1991. Funds made available under the Federal-Aid Highway Act that are approved by an MPO for a transit project would have to be transferred promptly to and administered by the Federal Transit Administration in accordance with the requirements of the Federal Transit Act.

Subsection (d) authorizes the Secretary, as under existing law, to contract for and make grants to states and local public bodies and their agencies for planning, engineering, designing, and evaluation of public transportation projects, and for other technical studies. Activities assisted under this section could include (1) studies relating to management, operations, capital requirements, and economic feasibility; (2) preparation of engineering and architectural surveys, plans, and specifications; (3) evaluation of previously funded projects; and (4) other similar or related activities preliminary to and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facilities and equipment. A grant of contract under this section would have to be made in accordance with criteria established by the Secretary.

Subsection (e), as does existing law, requires plans and programs under this section to encourage the participation of the private sector to the maximum extent feasible. A metropolitan planning organization would have exclusive responsibility for determining the policies and procedures necessary to carry out this subsection. If a program involves the acquisition of facilities and equipment that are already being used for mass transportation in urban areas, the program would have to provide that the facilities and equipment be so improved (such as through modernization, extension, or addition) that they will better serve the transportation needs of the area.

Subsection (f), would provide for the allocation of planning funds to MPOs. State planning funds would be provided as part of the new Section 26 State Program.

Basic Formula. 80 percent of the funds available to MPOs would be allocated to states in the ratio that the population in urbanized areas, in each state, bears to the total population in urbanized areas, in all the states as shown by the latest available decennial census. No state would receive less than ½ of 1 percent of the amount apportioned under this paragraph, however.

Funds would be allocated to MPOs within the state, by a formula—developed by the State in cooperation with metropolitan planning organizations and approved by the Secretary—that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in section 8 of this Act.

Supplemental Formula for Transportation Management Areas. The remaining 20 percent of the funds made to MPOs would be allocated to supplement funds for metropolitan planning organizations in transportation management areas. Such funds would be allocated according to a formula that reflects the additional costs of carrying out planning, programming and project selection responsibilities under this section in such areas.

Hold Harmless. To ensure that each MPO would receive no less under the formula than the amount it received by administrative formula under section 8 of this Act in fiscal year 1991, the Secretary could make a pro rata reduction in other amounts made available to carry out the state and national planning and research program.

Matching Share. The federal share for section 8 activities would be 75 percent except where the Secretary determines that it is in the federal interest not to require a state or local match.

Sec. 20. Section 9 program—Allocations. This section would make a technical correction to the percentage of funds set-aside for small urbanized areas and large urbanized areas. Under current law, the section 18 and section 9 programs are funded as percentage set-asides from one amount. The bill provides for a separate set-aside for rural transit programs. This section simply reflects this change by proportionally adjusting the section 9 set-asides for large urbanized areas and small urbanized areas.

Sec. 21. Section 9 Formula Grant Program-Discretionary Transfer of Apportionment. This section would amend Section 9 of the FT Act to permit a transfer of transit funds to highway use under certain circumstances. This is comparable to amendments to the Federal-Aid Highway Act that would permit highway funds to be used for transit projects.

Subsection (a) would amend section 9(j)(1) of the FT Act to provide that, in a transportation management area, formula grants for construction projects could also be used for highway projects; provided that (i) such use is approved by the metropolitan planning organization in accordance with section 8(c) after appropriate notice and opportunity for comment and appeal is provided to affected transit providers and (ii) adequate provision is first made for sound operation of existing transit facilities, maintenance of such facilities and their carrying capacity, management of ongoing transit operations, and any program of investments required to comply with the Americans with Disabilities Act or the Clean Air Act as amended.

Subsection (b) would add a new provision to subsection (j) of the FT Act, which would permit Section 9 construction funds to be used for a highway project only if (i) funds for the State or local government share of the project are eligible to fund either highway or transit projects, or (ii) the Secretary finds that State or local law provides a dedicated source of sufficient funding available to fund local transit projects.

Sec. 22. Section 9 Program—Elimination of Incentive Tier. This section would eliminate the "incentive tier" provisions of the section 9 bus and rail funding formulas. The "incentive tier" provisions—introduced in the Surface Transportation Assistance Act of 1982—now allocate a small portion of formula funds by factors purporting to weigh and reward the operating efficiency of bus and rail systems. The Administration recommended eliminating the incentive tier for the following reasons: (1) the technique used to collect the necessary data—particularly passenger miles—are difficult to verify and apply consistently among the nation's transit operators; (2) there is no evidence that application of the incentive factors has induced any change in behavior among the transit operators; and (3) the overall effect of eliminating the incentive tier would be insignificant.

Sec. 23. Section 9 Program—Energy Efficiency. This section would amend section 9 to prevent a transit recipient that undertakes certain energy efficiency initiatives from losing formula funds. Under existing law, a rail system that makes energy savings by using less equipment (e.g. by running shorter trains)—while still providing the same frequency of revenue service to the same number of riders—would lose funds under the Section 9 rail tier formula. The section would hold harmless those rail systems that demonstrate to the satisfaction of the Secretary the combination of energy savings and continued service described above.

Sec. 24. Section 9 Program—Applicability of Safety Program. This section would apply Section 22 of the Federal Transit Act, which gives the Secretary investigatory powers to ensure safety in mass transit systems, to the section 9 program. The provision is necessary because of the requirement in section 9(e)(1) that only specified sections of the Federal Transit Act apply to section 9.

Sec. 25. Section 9 Program—Certifications. This section would make several amendments to simplify the section 9 grant application process—particularly the existing requirements that recipients self-certify their compliance with various statutory mandates.

Subsection (a) would mandate that all certifications required by law be incorporated into a single document to be submitted annually as part of the Section 9 application. The subsection would also require the Secretary to publish an annual list of all required certifications in conjunction with its annual publication—currently required by Section 9(q)—of information outlining the apportionment of Section 9 funds.

Subsection (b) would require the Secretary to establish streamlined procedures to govern a recipient's "continuing control" certification with respect to track and signal equipment. Under existing law, a section 9 recipient is required to certify that it has or will have "satisfactory continuing control" over the use of its facilities and equipment. Transit operators have found that UMTA's interpretation of this requirement with respect to track and signal equipment imposes unnecessary administrative burdens on transit recipients.

Sec. 26. Section 9 Program—Program of Projects. This section would require a recipient, in developing its program of projects, to assure that the program provides for the maximum feasible coordination of public transportation services assisted under the section 9 program with transportation services assisted by other federal sources. A similar provision currently is in Section 18 of the Act.

Sec. 27. Section 9 Program—Continued Assistance for Commuter Rail in Southern Florida. This section would amend the Surface Transportation and Uniform Relocation Assistance Act of 1987 to permit a commuter rail line (Tri-County Rail Authority) in south-eastern Florida to continue to receive federal operating assistance under section 9.

Sec. 28. Section 11—University Transportation Centers. Section 28(1) would revise the responsibilities of university transportation research to include safety issues. Section 28(2) would delete the current National Advisory Council provision and replace it with a requirement that the results of studies conducted by the Centers be coordinated and disseminated by the Secretary.

Section 28(3) would amend section 11(b)(8) to permit up to 1% of the funds made available under this program by any agency of

the Department to be available for the administrative expenses the Department incurs in administering the program. The Secretary intends to delegate the responsibility to administer the program to the Administrator of the Research and Special Programs Administration.

Section 28(4) would add paragraphs (11) and (12) to the end of section 11(b) of the Act. Paragraph (11) allows the Secretary to make available to the University Centers other funds appropriated for transportation research.

In addition, Paragraph (12) would establish three additional National University Centers for transportation management, research and development to accelerate the involvement and participation of minorities and women in transportation related professions, especially in the science, technology and engineering disciplines. These new Centers would meet all of the guidelines and criteria applicable to the other University Centers.

Sec. 29. Rulemaking. This section would require the Secretary to undertake formal rulemaking when proposing or implementing rules governing activities under the Urban Mass Transportation Act. This is intended to prevent the Secretary from implementing policy revisions through routine guidance circulars rather than through formal rules.

Sec. 30. Section 12—Transfer of Facilities and Equipment. This section would amend the general provisions of Section 12 to allow the Secretary to authorize the transfer of facilities and equipment acquired with funds under the Act to any public body for uses other than mass transportation. Under current law, the transfer of excess property for other public uses is difficult and cumbersome. This provision would simplify the process and allow, for example, the transfer of a surplus bus maintenance facility from a transit authority to a public school district.

The transferred facilities and equipment would have to remain in a public purpose use for a minimum of five years. In addition, prior to making any transfer, the Secretary would first have to make a written determination that there are no other mass transit purposes for which the asset should be used; that the benefit of the transfer outweighs liquidation of the asset and return of the Federal financial interest in the asset; and that there is no Federal use for the asset.

Sec. 31. Special Procurement. The bill will amend section 12 of the FT Act by adding a new subsection that authorizes two new refinements to law affecting FTA procurement procedures.

Turnkey System Procurements. This paragraph would promote the adoption of new transit technologies, such as automatically guided rail systems, and make possible lower cost construction of new mass transportation systems through the use of "turnkey" procurement. "Turnkey" refers to a vendor-specific project under which a manufacturer contracts to (1) build a total system that meets specific performance criteria, (2) operate it for a period of time, and then (3) transfer operation to the transit system after reliable performance is assured. The paragraph would authorize the Secretary to allow the solicitation for a turnkey system project to be conditionally awarded before all Federal requirements have been met so long as the award is made without prejudice to the implementation of those Federal requirements. Federal financial assistance under the FT Act could be made available when the recipient has complied with relevant Federal requirements. The Secretary is expected to develop appropriate regulations in a timely manner. In the meantime, and to assist in the development of those regulations, the Secretary is authorized to select a maximum of 4 projects under this paragraph and temporarily to waive requirements of law to the extent that such waiver is appropriate to achieve efficient and expeditious implementation of those projects.

Multi-year rolling stock procurement. This paragraph would authorize a transit operator to enter into multi-year agreements for the purchase of rolling stock, such as busses and rail cars, and replacement parts. The purpose of this reform is to permit a reduction of overall procurement and maintenance costs through greater standardization and more orderly replacement of fleets. The agreements could provide for an option to purchase additional rolling stock or replacement parts for a period not to exceed 5 years from the date of the original contract. The Committee considered favorably a proposal to amend existing statute with language stating that an operator could award a contract to other than the low bidder so long as the recipient pays the extra cost with nonfederal funds and Federal reimbursement is made on the basis of the low bid. The Committee did not include this amendment after being assured by the Administration that existing law permits operators to achieve this by using negotiated procurement procedures.

The paragraph would also authorize two or more recipients to cooperate for the joint procurement of vehicles. The Secretary is expected to provide streamlined procedures so that rural transit operators and smaller communities can efficiently use such joint procurement procedures.

Sec. 32. Section 16—Elderly and Persons with Disabilities. This section would clarify existing FTA practice by specifying that funds provided under the Section 16(b)(2) program will be allocated to the States, who in turn will distribute funds to eligible private non-profit organizations. States would submit a program of projects to the Secretary for approval as is current practice. The section also requires an assurance that the state's program of projects provides for the coordination of Section 16(b)(2) transportation services with transportation services assisted from other Federal sources. This provision is designed to encourage more effective coordination and to avoid duplication of service.

In addition, the section would authorize assistance to public bodies that are approved by a State to coordinate transportation services for elderly persons and persons with disabilities. This provision is designed to support the efforts of States attempting to coordinate transportation services. For example, Florida has passed a state law that mandates statewide coordination of all transportation services for the disadvantaged. Several of the entities designated by the state to coordinate these activities are public bodies such as county commissions. Although these designated entities must coordinate both funding sources and service provision, current law precludes them from receiving funds under 16(b)(2), thus hindering their ability to fully coordinate these transportation services.

The section would allow the Governor of each state to use any funds that remain unobligated from the Section 16(b)(2) program during the final 90 day period prior to the expiration of the grant to be used to supplement funds distributed under either the Section 18 program or the Section 9 program.

The section would also require the Secretary to issue regulations to allow recipients of 16(b)(2) funds to lease their equipment to public transit entities. The section specifies that the regulations shall be issued within 60 days of enactment of the bill.

Sec. 33. Section 18—Transfer of Facilities and Equipment. This section would add a provision to allow States the flexibility to transfer facilities and equipment between the Section 18 and Section 16(b) programs. Current law does not allow equipment transfers from one program to the other. Under this provision a State could, for example, transfer vans purchased with Section 18 funds to the Section 16(b) program and vice versa. The original program use requirements of Section 18 and Section 16(b) would continue to apply to any transferred equipment.

Sec. 34. Section 20—Human Resources Program Support. This section would amend current Section 20, which authorizes the Secretary to make grants or contracts for national or local programs that address human resource needs as they apply to public transportation activities. This section would redesignate the current provision as subsection (a) and add a new subsection (b).

This new subsection would authorize the Secretary to retain any funds returned in connection with these human resource activities in a fund whereby these retained funds could in turn be made available for any human resource activities eligible to be funded under section 20.

Sec. 35. Authorizations.—This section would provide authorization levels for the various programs in the bill. Under current law, section 9 and 18 formula programs are funded primarily from general revenue. The section 3 new starts, rail modernization, and bus discretionary programs, section 16(b)(2) elderly and handicapped transit and Section 8 planning—are funded from the mass transit account of the highway trust fund. Historically, programs funded from general revenues have experienced larger cuts in the appropriations process than have programs funded from the trust fund. This proposal would restructure funding sources to provide greater equity between formula and discretionary programs. All formula and discretionary programs would receive a similar percentage of funds from both the trust fund and general revenues.

Funding for the various programs would, in most cases, be provided as a percentage of total funds available for formula and discretionary programs and the National Capital Transportation Act.

3.0% of total FTA funds would be authorized for planning, programming and research. Those funds would be distributed as follows:

45% would be available for MPOs under section 8(f);

5% would be available for the Rural Transit Assistance Program under section 18(h);

20% would be available for the state research and planning program under section 26(a); and

30% would be available for the national planning and research program under section 26(b).

1.04% of total FTA funds would be authorized for administrative expenses under section 12(a)—providing the Administration's requested amount;

1.5% of total FTA funds would be authorized for elderly and handicapped transportation under section 16(b);

$5,000,000 would be authorized for each of fiscal years 1992 through 1996 for University Transportation Centers under section 11(b);

$160,000,000 would be authorized for fiscal year 1992 and $164,843,000 for fiscal year 1993

for completion of the Interstate Transfer program transit projects;

6% of the remaining formula funds would be authorized for rural transportation under section 18, which would essentially double the funding for these activities;

the balance of formula funds would be available for section 9 formula grants.

Sec. 36. Report on Safety Conditions in Mass Transit. This section would require the Secretary to submit a report to Congress within 180 days of enactment on the safety record of mass transit. The report would include a summary of all passenger-related and employee-related deaths and injuries resulting from unsafe conditions in mass transit facilities. The report would also include a summary of the investigative and remedial actions taken by the Secretary in accordance with the authority provided by Section 22. Finally, the report would make recommendations concerning any legislative or administrative actions that are necessary to ensure that recipients of federal funds will institute the best means available to correct or eliminate safety hazards.

Sec. 37. Section 23—Project Management Oversight. This section would increase the percentage of funds reserved for FTA's project management oversight program. The current ½ percent takedown from all funds available to carry out sections 3, 9, 18, interstate transfer projects, and the National Capital Transporation Act (authorizing legislation for D.C. Metro) would be increased to ¾ percent. A technical restriction would be removed that currently limits the use of these "takedowns" from each eligible program to projects funded under that same particular section. Instead, FTA could aggregate all of these funds for use on projects in any of the eligible programs.

Sec. 38. Section 26—Transportation Planning and Research. This section would clarify the research functions of the agency by adding a new Section 26 to the Act. Subsection (a) would provide for a state research and planning program.

50 percent of the funds authorized under subsection 35(c)(3) of this Act would be available under subsection 26(a)(1) of the FT Act for a transit cooperative research program to be administered by an independent governing board established by the Secretary. The majority of the board members would represent transit operating agencies. The mass transit projects the board approves would be carried out by means of grants or cooperative agreements from the Secretary of the National Academy of Sciences. The transit cooperative research program is intended to be an applied research program that focuses on identifying and evaluating solutions to everyday problems of transit operators.

The other 50 percent of funds would be available to the States on the basis of population for grants or contracts consistent with the purposes of sections 6, 8, 10, 11, or 20 of the Act. No state would receive less than one-half of one percent of the amount apportioned in this section. States could also use a portion of their funds for activities in conjunction with the transit cooperative research program as well with local metropolitan planning organizations.

Subsection (b) would provide for a national research program to be administered by the Secretary. The secretary would be authorized to use the funds for section 35(c)(4) for grants or contracts in accordance with sections 6, 8, 10, 11, or 20 of the Act.

Subsection (b)(2) would require the Secretary to set aside a minimum of $2 million in funds for transit related technical assistance, demonstration programs, research development, technological innovations and public education for the purpose of assisting with implementation of the Americans with Disabilities Act. To the extent practicable, the Secretary would contract with a national non-profit organization with demonstrated capacity to carry out this activity.

Subsection (b)(3) would authorize the Secretary to use up to 25% of the section 26(b)(1) funding for special initiatives. In connection with these initiatives, the Secretary may provide expedited processing governing compliance with the requirements of this Act for nonrenewable grants that do not exceed $100,000.

Subsection (b)(4) would authorize the Secretary to undertake a program of transit technology development in coordination with affected entities. The Secretary would establish an Industry Technical Panel composed of representatives of transportation operators and suppliers. Representatives of the suppliers could compromise a majority. The panel would assist the Secretary in identifying promising areas for technology development and in developing guidelines for project development. The Secretary would also develop guidelines on cost sharing principles for technology development projects.

Subsection (b)(5) would permit the Secretary to use funds under this subsection to supplement funds under the transit cooperative research program, subsection (a)(1) of this Act, in the state program.

Subsection (b)(6) would permit the Secretary to impose an appropriate local share for any grant or contract that gives a clear and direct financial benefit to an entity.

Sec. 39. Technical Accounting Provisions. This section would correct administrative difficulties resulting from current accounting practices. Funds appropriated prior to October 1, 1983, that remain available for expenditure after October 1, 1991, could be transferred to and administered under the most recent appropriation heading for the relevant section.

Sec. 40. GAO Report on Impact of Charter Service Regulations. This section would require the General Accounting Office to submit a report to Congress evaluating the impact of the existing charter service regulations on the ability of communities to meet their local transportation needs. The report would specifically analyze the impact of the regulations on the ability of communities to meet the transportation needs of government, civic and charitable organizations and carry out economic development activities. The report would also analyze the extent to which (1) public transit operators and private carriers have entered into charter service agreements; and (2) private carriers profit from the provision of charter service by public operators. The GAO would be instructed to examine the impact of the charter service regulations in at least three communities. The final report would be due not later than 12 months following enactment of the Act.

Sec. 41. GAO Study on Public Transit Needs. This section would require the General Accounting Office, on a biennial basis, to submit a Report to Congress that evaluates the extent to which the nation's transit are being adequately addressed. The report would include (1) an analysis of the unmet needs for transit; (2) a projection of the maintenance and modernization needs that will accrue over the coming five years as existing transit equipment and facilities deteriorate; and (3) a projection of the need to invest in additional transit facilities over the coming five years to meet changing economic, commuter and residential patterns. The report would also estimate (1) the cost of meeting the needs identified above; (2) the public and private resources that will be available to support public transit; and (3) the gap between transit needs and resources.

Sec. 42. Use of Population Estimates. This section would require more frequent updates of the population statistics used to distribute funds under Section 18 and Section 9 for small urbanized areas. Under current law, all UMTA formula programs use population statistics from the most recently available Federal Census. This section would require the Secretary to use interim population estimates provided by the Secretary of Commerce to update the formulas every four years.

Sec. 43. Section 9B—Technical Amendment. This section would make a technical amendment to the wording of Section 9B of the Urban Mass Transportation Act to conform with other changes proposed in this bill.

Sec. 44. Use of Census Data. This section would require the Secretary to use data from the 1990 census, to the extent practicable, in determining allocation of funds under Sections 9, 16(b)(2) and 18 for fiscal year 1992. The Secretary of Transportation and the Secretary of Commerce would be required to coordinate efforts to expedite the availability of census data in a form that is appropriate for the transit program formulas. The Secretary of Transportation must notify the Congressional authorizing Committees of actions taken under this section within 9 months of enactment of the Federal Transit Act.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, JUNE 10, 1991

1. Bill number: S. 1194.

2. Bill title: Federal Transit Act of 1991.

3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs, June 6, 1991.

4. Bill purpose: S. 1194 would provide contract authority and authorize appropriations for various programs of the Urban Mass Transit Administration (UMTA). For urban formula grants, rural transit grants, interstate transfer transit grants and several other UMTA programs, the bill would provide contract authority totalling $6.6 billion and authorize appropriations of $7.0 billion over the 1992–1996 period. For capital grants authorized by Section 3 of the Urban Mass Transportation Act of 1964 (known as the section 3 program), the bill would provide contract authority of $3.4 billion and authorize appropriations of $4.0 billion over the same period.

The bill would also make a number of changes to the funding structure of federal mass transportation grant programs. Under current law, only the section 3 program and the section 9B formula capital grants program are funded with contact authority while all other UMTA programs are subject to appropriations. S. 1194 would establish a dual funding system where by all UMTA programs would receive both contract authority and appropriations. Further, funding for all these programs would come from both the transit account of the Highway Trust Fund and the general fund of the Treasury.

UMTA would receive additional flexibility in managing capital projects under S. 1194. The bill would allow the agency to enter into full funding contracts under the section 3 program that could include contingent commitments to obligate future years' budget authority for specific projects. UMTA could also enter into early systems work agree-

ments that would obligate available budget authority to pay for preliminary project implementation costs in advance of final project approval.

Also included in this bill are provisions that would:

Change the name of the Urban Mass Transportation Administration to the Federal Transit Administration;

Expand the activities eligible for funding under UMTA grant programs; and

Expand the existing transportation planning process established by the 1964 act.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
BUDGET AUTHORITY					
Formula Grants and Other:					
UMTA programs	1,071	1,220	1,300	1,450	1,565
Section 3 capital grants	535	580	680	750	835
Total budget authority	1,606	1,800	1,980	2,200	2,400
AUTHORIZATIONS					
Formula grants and other:					
UMTA programs	1,440	1,387	1,351	1,382	1,460
Section 3 capital grants	775	780	799	829	850
Total authorization level	2,215	2,167	2,150	2,210	2,310
Estimated outlays	710	1,524	2,381	3,020	3,675
Total:					
Budget authority/ authorizations	3,821	3,967	4,130	4,410	4,710
Estimated outlays	710	1,524	2,381	3,020	3,675

Total outlays for programs authorized by this bill, including outlays from previous years' appropriations, would grow from $3.6 billion in 1992 to $4.2 billion in 1996.

The costs of this bill fall within budget function 400.

Basis of Estimate: The budget authority equals the contract authority provided in this bill. To estimate outlays from the contract authority, we assume that obligation limitations customarily established in appropriations acts would equal the budget authority. Because these outlays are subject to such limitations and to liquidating appropriations, they are considered discretionary and so are included under authorizations in the above table.

For the spending subject to appropriations, CBO assumed that the full amounts authorized for each year would be appropriated prior to the start of the fiscal year. Outlay estimates are based on historical spending rates.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. While S. 1194 would provide contract authority for mass transportation programs, the outlays for these programs would be considered discretionary, as explained above. Therefore, CBO estimates that enactment of S. 1194 would not affect direct spending or receipts, and pay-as-you-go procedures would not apply to this bill.

7. Estimated cost to State and local governments: Most of the funding provided by this bill is in the form of grants to state and local governments. Several provisions would affect the allocation of funds among the states and alter cost-sharing arrangements for some types of projects. Specifically, the bill would establish a higher federal share for projects that involve the acquisition of equipment or construction of facilities required by the Clean Air Act Amendments of 1990 or the Americans with Disabilities Act. In addition, S. 1194 would expand the activities eligible for funding under UMTA grant programs.

Federal requirements for transportation planning would be expanded upon enactment of this legislation, but funds provided for this purpose would also increase.

8. Estimate comparison: None

9. Previous CBO estimate: None

10. Estimate prepared by: Marjorie Miller.

11. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).•

RECOGNITION OF FARMERS HOME ADMINISTRATION, LONDON, KY

• Mr. FORD. Mr. President, I rise today to recognize the outstanding accomplishments of the Farmers Home Administration District Office in London, KY. The office staff will be in Washington today to receive the Superior Service Award from the U.S. Department of Agriculture for outstanding contributions to rural development in southeastern Kentucky. The members of the group include Kenneth R. Arterburn, district director; E. Gene Bundy, district loan specialist; Mary M. Woods, district loan technician; and Athalene Anders, district office clerk.

As one of the administrators of the largest and most diversified loan and grant portfolios in the State during the past year, the FmHA District Office in London has provided waste disposal system loans and grants, rural rental housing loans, community facilities loans, and two Appalachian Regional Commission grants. The London district office has been instrumental in providing community facility loans for health care facilities, a community building, a fire department, a housing preservation grant, and numerous recreation projects.

Mr. President, I find one of the most distinguishing characteristics of the district to be an outstanding collection record. In considering the high volume of loans and grants the district administers, I am most impressed by such an excellent record. The impressive record is undoubtedly attributable to the hard work and dedication by the members of the district office staff.

The members of the London office have been with Farmers Home Administration for at least 20 years, each dedicating a long and distinguished career of service. The residents of the London area are certainly lucky to have such individuals implementing and admirably working to strengthen the family farm, rural incomes, and rural communities.

As the London District Office is recognized today for its superior service, I commend the outstanding performance of the staff and encourage the continuance of their dedication to the rural communities of southeastern Kentucky.•

FOOD SALES TO THE SOVIET UNION

• Mr. EXON. Mr. President, I was pleased that the President has taken the advice of the United States Senate and extended agricultural export credit guarantees to the Soviet Union. The President acted in a measured fashion which will help encourage continued reform in the Soviet Union and protect American taxpayers from default. It is clear that the Senate resolution expressing support for the credit guarantees played a role in the President's decision.

It is a wise decision. The American farmer will welcome this action and it will give the American agricultural exports a shot in the arm. It is wrong to think of the President's action as extending aid. It is not. It is facilitating trade. This move serves American interests very well.

For quite some time, I have been encouraging the Bush administration to explore a long-term food for oil barter arrangement, where American food and oil production technology can be traded for future Soviet oil production. This spring I explained my proposal to the Soviet Minister of Oil and Gas and the Soviet Minister of Agriculture and received very positive response to the concept and the Senate passed resolution on agricultural export credit guarantees endorsed the use of barter, countertrade and other nontraditional means of finance to expand trade with the Soviet Union.

I was delighted to see an article in the June 12 Journal of Commerce written by Prof. Lawrence M. Lesser, which endorses the very type of arrangement I have been suggesting.

Mr. President, I encourage my colleagues to read this well-written article and ask that the text of Professor Lesser's article be printed in the RECORD.

The article follows:

TRADING U.S. AID FOR SOVIET OIL

(By Lawrence M. Lesser)

President Bush appears poised to grant Soviet President Mikhail Gorbachev's request for $1.5 billion in U.S. agricultural credit guarantees to meet a food crisis in the Soviet Union. If Mr. Bush does so, it will be over the objections of some of his own economic advisers and the Central Intelligence Agency.

Skeptics question whether it is in the U.S. national interest to help the Soviets at a time when their economy has gone into a free-fall and they have done little to help themselves. Complicating the decision-making process is a U.S. law that requires foreign customers for American agricultural commodities to be able to repay their debts to qualify for U.S. export credit guarantees. The United States granted Moscow $1 billion in credit guarantees last December.

Extension of American credit guarantees to the Soviet Union clearly would benefit American farmers, improve the U.S. balance of trade and strengthen Mr. Gorbachev's standing at home. It also might benefit Soviet consumers.

But it is also important to consider what this aid will mean for American taxpayers and what steps can be taken to protect the U.S. treasury. The Soviet Union's inability to pay its creditors is a serious concern, given Moscow's current massive indebtedness to Western governments and corporations.

Recently, the Central Intelligence Agency warned Congress that "the Soviet economy is disintegrating and could be on the way to a disaster of historic proportions." Major international banks have sharply downgraded the Soviet Union's credit rating and refused to provide new loans.

The General Accounting Office recently estimated that total defaults under the agricultural credit guarantee program, including $2 billion owed by Iraq, will cost the United States as much as $6.7 billion. And the Congressional watchdog agency warns that losses may go higher if additional credits are extended to high-risk borrowers, such as the Soviets.

If Mr. Bush approves Mr. Gorbachev's entire request without attaching conditions to protect the U.S. treasury, the level of U.S. credit guarantees outstanding to the Soviet Union alone would represent almost half the total for all countries this year under the export credit guarantee program.

One prudent step Mr. Bush should take is to wait until next month before formally committing the United States. He could then see if the Soviets meet the first interest payment due on the $1 billion in credits Washington extended last December. Another is to release the new credits in phases, a step the administration is considering.

The Soviet Union grows more wheat than any other country in the world. But in spite of an abundant harvest in 1990, less than half of the 235 million metric tons produced actually reached store shelves. Production of many other food items, such as meat, sugar, fruits and vegetables, was down.

In recent testimony before the congressional Joint Economic Committee, George Kolt, director of the CIA's Office of Soviet Analysis, said Soviet consumers faced "greater shortages and higher prices than at any time in the past four decades. Breakdowns in distribution compounded the shortage problem and magnified regional and social inequalities in living standards."

America is the world's largest exporter of agricultural commodities. And the United States has ample supplies to help feed the Soviet people, as well as the technological expertise to overhaul the infrastructure on which Soviet agriculture depends. Americans can teach Soviets how to decentralize, how to privatize and how to install other incentives, such as market pricing, that will make it possible for them to distribute food efficiently.

In addition to wheat, the Soviet Union also is the largest oil producer in the world, surpassing even Saudia Arabia. As a nation with some of the largest proven reserves, including three of the world's largest oil fields, the Soviet Union can offer American firms enormous opportunities for oil and gas exploration.

Like the agriculture sector, the Soviets also face daunting problems with their oil and gas infrastructure. As estimated 9% of all oil production is spilled every year, while ten percent of all natural gas production leaks from defective pipelines.

Given Moscow's lack of cash and need for more efficient ways to distribute its surpluses, there is a unique opportunity here for an accord in which American food and technical assistance could be bartered for Soviet oil. The price of each could be negotiated on the basis of market factors. By sharing U.S. agricultural and energy technology, American firms could help to overhaul outmoded Soviet production and distribution facilities and systems in both industries.

A food-for-oil pact would ease U.S. concerns about Soviet credit-worthiness since Soviet oil production could serve as collateral for new credits. And it would enable the United States to diversify its sources of petroleum, a step Mr. Bush called for earlier this year as part of his National Energy Strategy.

Daily events in the Soviet Union alternately elicit feelings of hope and despair. Mr. Gorbachev's power-sharing pact with the republics, the Soviet parliament's approval of legislation to guarantee freedom of emigration, the renewed impetus toward democracy and a free market economy, and a new willingness to resolve outstanding differences with the United States on arms control, are all positive developments.

But political repression and denial of basic human rights remain of deep concern. Another wave of repression could come at any time, as it did after Mr. Bush granted the Soviets grain credits last December.

Mr. Bush, as he did during the war against Iraq, once again can demonstrate his capacity to lead by proposing a barter arrangement between the United States and the Soviet Union. A comprehensive program of this kind would benefit the economies of both countries, protect American taxpayers and advance U.S.-Soviet relations.●

THE TRANSITION OF EASTERN EUROPE TO FREE MARKET ECONOMIES

● Mr. ROTH. Mr. President, the world's attention over the past year has been focused on Eastern Europe, as formerly Communist nations such as Poland have endeavored to transition to free market economies. The United States has assisted greatly in this move, which captures our imagination and desire to see freedom around the globe, and certainly serves our national interest as well.

Poland faces a major challenge next week in its attempt to shed the burdens of its Communist days when it continues negotiations with foreign financial institutions over its debt repayments. Communist regimes in Poland borrowed $48 billion, and of this, the country now owes approximately $12 billion to commercial banks. Representatives of these institutions will meet in Frankfurt with Polish Government officials to try to reach agreement on rescheduling this private debt.

Western governments took the lead last March in easing this crushing debt burden when they agreed to provide debt relief totaling $17 billion over a period of several years. The agreement with these nations—who acted collectively as the Paris Club—provided that Poland may not offer more favorable terms to any other creditors. Hence it is critical that Western financial institutions also show flexibility and realism in dealing with the Poles.

Mr. President, the course of history depends on the ability of formerly Communist countries to convert to market economies. In Poland's case, this requires a realistic approach to the acute problem of its overwhelming public debt, and I encourage Western commercial institutions to approach the upcoming negotiations in this manner.●

INTERNATIONAL EFFORTS TO PROTECT THE KURDISH PEOPLE

● Mr. KERREY. Mr. President, in the past 72 hours we have immersed the military participants of Operation Desert Storm with an unprecedented homecoming. In Washington, DC, it was one of the largest demonstrations; in New York City they broke all previous records.

The success being celebrated is the military victory over the Iraqi army. American and allied forces drove the Iraqi occupiers out of Kuwait just as they promised to do. It was a very impressive operation and we now welcome home those who impressed us so much.

The language of our speakers describe this as a victory for liberty and freedom. However, as stunning as the military victory was, the fight for freedom has just begun. Reports of ongoing human rights abuses in Kuwait indicate that we need to sustain our concern for the freedom of the Kuwaiti people. Further, as grateful as I am for the safe homecoming of our men and women, the most impressive movement home has been the return of Kurdish refugees to northern Iraq. Mr. President, I hope and pray we do not forget them.

In this morning's Washington Post there is an editorial by Mr. Sadruddin Aga Khan, the executive delegate of the Secretary General for the United Nations interagency humanitarian program for Iraq, Kuwait, and the Iraq-Turkey and Iraq-Iran border areas. I ask that Mr. Khan's text appear at the conclusion of my statement.

Mr. Khan explains the purpose and history of the United Nations "guards contingent" formula being used in Iraq to protect the freedom of the Kurdish people. These 500 U.N. guards are in Mr. Khan's words "to be assigned wherever a U.N. humanitarian presence is needed * * * it is a small step for peace, a tentative but instructive idea of how innovation, even within the United Nations somewhat rigid structures, can unblock the impasse."

These 500 guards operate according to a May 23 U.N. agreement with Iraq and the framework agreement signed in Baghdad on April 18. It is a humanitarian operation which can only be successful if the United States stands watchfully and forcefully behind it. Unfortunately, thus far the voluntary fundraising effort has fallen short of needs. The United States must lead the

world to make certain this shortage evaporates. It would be a tragic and bitter end if the freedom of these refugees was sacrificed to complacency.

Mr. Khan's vision for a new kind of response is worthy of our support. His words are more than worthy; they inspire. He says:

The debate over a right of humanitarian intervention has been given a good airing recently. Compassion and self-interest find temporary common cause in international action to alleviate suffering that knows no frontiers. In a vacuum of authority, responsibility must be assumed, and services disrupted by disasters must be restored. Yet imposed concern remains largely unwelcome. Once again, innovation and flexibility are crucial. Life-saving and face-saving may have to go hand in hand.

Mr. President, not only do we have the opportunity through this effort to finish the job we began, we also have the opportunity to learn how to use force to prevent wars from beginning. In the postcontainment world we must provide the means to make these kinds of operations as big a success as Desert Storm.

The editorial follows:

[From the Washington Post, June 12, 1991]

U.N. PROTECTION BORN OF NECESSITY

(By Sadruddin Aga Khan)

On May 23 the United Nations secured Iraqi agreement to the deployment of up to 500 U.N. guards, to be assigned wherever a U.N. humanitarian presence is needed. This is not a panacea for the tensions and dangers of the region—and certainly not a means to "monitor all of Iraq," as Jim Hoagland writes [op-ed, June 5]. That was never the intention. But it is a small step for peace, a tentative but instructive idea of how innovation, even within the United Nations' somewhat rigid structures, can unblock the impasse.

The world's media spotlight—dazzlingly effective but lamentably brief—has focused on the grim plight of the Kurdish population in northern Iraq, which should not blind us to the needs of the victims of upheaval in other regions. Coalition forces responded first with a military efficiency that is enviable to traditional relief agencies. And since the signing of our framework agreement in Baghdad on April 18, the United Nations has had underway a humanitarian operation designed to bring succor to vulnerable groups throughout the country. The U.N. high commissioner for refugees has already taken over the Zakho transit camp. But security was hard to address within the confines of a humanitarian program.

Recourse to the Security Council was ruled out at the time. The peace-keeping option was tried to no avail. And indeed traditional U.N. peace-keeping, for all its successes, does have one pitfall: It can freeze a situation in an uneasy stalemate, with the underlying issues conveniently shelved by the parties—a "hard and bitter peace," in the words of John F. Kennedy. Just look at the 33 years of dispute over Kashmir or the 27 years of Cyprus's division.

Another approach was needed. That was why we came up with the "Guards Contingent" formula, blending the disparate humanitarian, political and security elements. A novel if still unproven experiment, the guards' basic mandate is to protect the precious human and material assets deployed in the humanitarian operation. They are neither peace-keepers nor policemen where U.N. resources are not involved. There are no guarantees. But they are there to observe, monitor and report. Any security incidents will be rapidly communicated up the chain of command. In the most direct sense, the guards may be a highly visible but symbolic presence—as indeed are peace-keeping operations themselves, where the "blue helmets" protect more by their color than by their dimension. But the guards ensure the international context. They will bear moral witness and help create confidence. As the eyes and ears of the United Nations, their reports can trigger further action. Moreover, bound as they are to the humanitarian program's time frame, a cutoff date prevents the inertia of the situation in Kashmir or Cyprus.

On first sounding out the concepts in Baghdad, I recalled an earlier idea, which we put forward in a 1981 U.N. report on "Human Rights and Massive Exoduses"—for a corps of "humanitarian observers." These observers were "to monitor situations and contribute through their presence to a de-escalation of tensions," as well as to facilitate humanitarian work. In a refugee context, they could contribute to speedy repatriation. Ahead of their time, they never materialized; however, a decade later the guards represent by another name much of that same philosophy.

The debate over a right of humanitarian intervention has been given a good airing recently. Compassion and self-interest find temporary common cause in international action to alleviate suffering that knows no frontiers. In a vaccum of authority, responsibility must be assumed, and services disrupted by disasters must be restored. Yet imposed concern remains largely unwelcome. Once again, innovation and flexibility are crucial. Life-saving and face-saving may have to go hand in hand.

Critics remind us that the United Nations enjoys no reputation for rapid response to crises: Its potential must indeed be better tapped. Nonetheless it may step in where other powers rightly hesitate to tread. The guards' deployment was risky and cannot shoulder a burden it was never intended to bear, but it deserves its niche in U.N. history. Whatever the outcome, we must not fear to improvise. When hundreds face death each day, as parents bury their children on barren mountaintops, we cannot await the ideal solution. Relief from starvation and disease brooks no bureaucracy.

Complex humanitarian and political challenges defy easy solution. There are no quick fixes: An idea such as the guards contingent for our operation in Iraq can only be part of a broader package. In such situations, where distrust, distress and violence feed upon each other in a poisonous circle, the antidote must have multiple ingredients. First, tensions must be lowered, with the parties agreeing to show some restraint and to support, at the very least, the implementation of the humanitarian program. Specific agreements to that effect should be concluded between all concerned. Second, civilian authority should prevail, reflecting the spirit if not the letter of a demilitarized region. Third, tentative or interim security arrangements might be ensured through a tripartite grouping of both sides together with international representatives associated with the humanitarian endeavor. Other assurances or leverage may come from outside. The tissue of confidence must be rewoven thread by thread. One missing strand, one unchecked incident, will unravel the safety net.

We cut some corners in sending in a first guards contingent before the ink was dry—in fact before the agreement was even signed. And as they had to be part of the humanitarian package, their funding is dependent upon voluntary contributions, in cash or in kind. So far the response has fallen short of the needs, estimated at some $35 million till the end of the year—about as much as it costs the coalition every week, according to press reports, to keep its forces in northern Iraq. Give us the means to make this operation a success. As the refugees return down our "blue routes," we must keep up the momentum. Peace comes cheaper than war; it is also a good investment. Solidarity today can reap stablility in a volatile region tomorrow.●

BUDGET SCOREKEEPING REPORT

● Mr. SASSER. Mr. President, I hereby submit to the Senate the most recent budget scorekeeping report for fiscal year 1991, prepared by the Congressional Budget Office under section 308(b) of the Congressional Budget Act of 1974, as amended. This report serves as the scorekeeping report for the purposes of section 605(b) and section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $0.4 billion in budget authority, and under the budget resolution by $0.4 billion in outlays. Current level is $1 million below the revenue target in 1991 and $6 million below the revenue target over the 5 years, 1991–95.

The current estimate of the deficit for purposes of calculating the maximum deficit amount is $326.6 billion, $0.4 billion below the maximum deficit amount for 1991 of $327 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 11, 1991.

Hon. JIM SASSER,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows that the effects of Congressional action on the budget for fiscal year 1991 and is current through June 10, 1991. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the Budget Enforcement Act of 1990 (Title XIII of P.L. 101–508). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated June 3, 1991, there has been no action that affects the current level of spending and revenues.

Sincerely,

ROBERT D. REISCHAUER,
Director.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 1ST SESS. AS OF JUNE 10, 1991

[In billions of dollars]

	Revised on-budget aggregates [1]	Current level [2]	Current level +/− aggregates
On-budget:			
Budget authority	1,189.2	1,188.8	−0.4
Outlays	1,132.4	1,132.0	−.4

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 1ST SESS. AS OF JUNE 10, 1991—Continued

[In billions of dollars]

	Revised on-budget aggregates [1]	Current level [2]	Current level +/− aggregates
Revenues			
1991	805.4	805.4	(3)
1991–95	4,690.3	4,690.3	(3)
Maximum deficit amount	327.0	326.6	−.4
Direct loan obligation	20.9	20.6	−.3
Guaranteed loan commitments	107.2	106.9	−.3
Debt subject to limit	4,145.0	3,401.1	−743.9
Off-budget:			
Social Security outlays:			
1991	234.2	234.2	
1991–95	1,284.4	1,284.4	
Social Security revenues:			
1991	303.1	303.1	
1991–95	1,736.3	1,736.3	

[1] The revised budget aggregates were made by the Senate Budget Committee staff in accordance with section 13112(f) of the Budget Enforcement Act of 1990 (title XIII of Public Law 101–508).

[2] Current level reprsents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. In accordance with section 606(d)(2) of the Budget Enforcement Act of 1990 (title XIII of Public Law 101–508) and in consultation with the Budget Committee, current level excludes $45.3 billion in budget authority and $34.6 billion in outlays for designated emergencies including Operation Desert Shield/Desert Storm; $1 billion in budget authority and $0.2 billion in outlays for debt forgiveness for Egypt and Poland; and $0.2 billion in budget authority and outlays for Internal Revenue Service funding above the June 1990 baseline level. Current level outlays include a $1.1 billion savings for the Bank Insurance Fund that the Committee attributes to the Omnibus Budget Reconciliation Act (Public Law 101–508), and revenues include the Office of Management and Budget's estimate of $3 billion for the Internal Revenue Service provision in the Treasury-Postal Service Appropriations Bill (Public Law 101–509). The current level of debt subject to limit reflects the lastest U.S. Treasury information on public debt transactions.

[3] Less than $50,000,000.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 1ST SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1991 AS OF CLOSING OF BUSINESS JUNE 10, 1991

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions;			
Revenues			834,910
Permaments appropriations	725,105	633,016	
Other legislation	664,057	676,371	
Offsetting receipts	−210,616	−210,616	
Total enacted in previous sessions	1,178,546	1,098,770	834,910
II. Enacted this session:			
Extending IRS Deadline for Desert Storm troops (H.R. 4, Public Law 102–2)			−1
Veterans' education, employment and training amendments (H.R. 180, Public Law 102–16)	2	2	
Dire emergency supplemental appropriations for 1991 (H.R. 1281, Public Law 102–27)	3,823	1,401	
Higher education technical amendments (H.R. 1285, Public Law 102–26)	3	3	
OMB domestic discretionary sequester	−2	1	
Total enacted this session	3,826	1,405	−1
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses: Emergency supplemental for humanitarian assistance (H.R. 2251)			
V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in revised on-budget aggregates	−8,572	539	
VI. Economic and technical assumption used by Committee for budget enforcement act estimates	15,000	31,300	−29,500
On-budget current level	1,188,799	1,132,014	805,409
Revised on-budget aggregates	1,189,215	1,132,396	805,410
Amount remaining:			
Over budget resolution			
Under budget resolution	416	382	1

Note. Numbers may not add due to rounding.•

FORCED LABOR IN CHINA

• Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of legislation that will strengthen our current tariff laws with respect to certain imports. These imports are literally made with the blood, sweat, and tears of forced labor. I commend the Senator from North Carolina for making this body aware of this tragic practice.

In some nations in our world, forced labor, using convicts, prisoners of conscience, and other forms of involuntary service, is endemic. Certain of these nations extract through their captive labor supply literally hundreds of millions of dollars' worth of goods and services to sell on the world market. The world community, which embraces the respect for basic human rights, must necessarily shun this heinous activity.

The two bills that are being introduced today will impart upon those nations that would consider using forced labor as an economic tool that the United States will not tolerate the importation of their ill-gotten gain. The second bill distinctly points to China, a nation that documentary evidence has shown exports products made by forced labor.

While other nations throughout the world may allow such products into their nations, these bills will guarantee that such products do not arrive on American soil. However, should any prohibited product be imported into the United States, remedies and damage provisions will allow afflicted parties the right to sue for treble damages.

Mr. President, few among us could ever condone the use of forced labor. Unfortunately, in some nations, such labor is an integral part of the economy. While the United States may not be able to take direct action to affect a change in this practice, we can take steps to make sure that the result of such behavior does not taint our shores. I am pleased to cosponsor this important legislation and I urge the Senate to take action on these bills.•

THE INTERNATIONAL PARENTAL CHILD KIDNAPING ACT

• Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of the International Parental Child Kidnaping Act. This bill amends the criminal code to make international parental child kidnaping a Federal offense.

Over the years, we have witnessed the increased incidence of family dissolution in America which has brought about a host of associated problems. Among these is child kidnaping. While separation and divorce are frequently marked by competing claims for custody of minor children, recent times have seen losing parties resort to self-help by kidnaping their own children.

In terms of international child kidnaping, the situation is particularly grave. Last year, there were nearly 400 new incidents involving American children who were kidnaped to a foreign country by a noncustodial parent. Some progress in this area has been made since the United States signed the Hague Convention in 1980. Among other things, this convention established regulations to facilitate the return of kidnaped children to their custodial parent. However, the policies adopted at the Hague only pertain to the signatory countries. Since many cases of kidnaping do not involve these nations, serious impediments to solving this troublesome issue remain.

The most effective way to deal with international child kidnaping is to prevent its occurrence. By making this inexcusable act a Federal crime, parents will be deterred from kidnaping their children across national boundaries. The bill that Senator DIXON and I are introducing would allow Federal law enforcement officials to become involved in these cases and would

strengthen their hands when seeking the extradition of an indicted parent. Furthermore, the bill would send a strong message to other nations that we are very serious about preventing this insidious activity.

It is clear that these missing children must not be ignored. Given the international scope of this form of kidnaping, effective enforcement requires Federal intervention. This is a problem that deserves the immediate attention of Congress, and I urge my colleagues to support this important legislation.●

HAPPY BIRTHDAY, PEZZOO

● Mr. DIXON. Mr. President, once in a while you have the pleasure to rise on a grand occasion for a great friend. And the good news is that on June 30 of this year, Harry Pezzullo will be 80 years old. Mr. President, the Great Pezzoo will be 80 years old June 30 of this year.

Mr. President, Harry Pezzullo, and I have been friends for a long time. Following World War II, Harry Pezzullo, the Great Pezzoo, was appointed golf professional at Mission Hills in Northbrook, IL, a position he held for 25 years with great distinction before becoming head pro at Plum Tree National near Harvard, IL. There, he remained in his profession until he joined JDM Country Club in Palm Beach Gardens, FL, some years ago.

He became a leader in his profession and went on to become president of the Illinois section of the PGA of America, an honor he held for 14 years.

He was elected vice president of the National PGA and served for 2 years, during which time he was named Golf Professional of the Year. Later, he was again selected vice president of the National PGA, and during his 3-year post was named to the PGA Tournament Policy Board.

Mr. President, old Pezzoo was a touring pro when he was 19 years of age. He played in the first tournament that Bing Crosby originated back in the middle 1930's and played on the tour with a lot of famous golf firsts, like Sam Snead and others, that are best remembered from another distinguished era.

But, I am here to tell you, Mr. President, that old Pezzoo can still play. Just think of this: For anyone who plays golf—and I take note of the fact that the President in the presiding chair from time to time indulges in that sport—it is meaningful to observe that the man I am talking about, Pro Pezzoo, can break his age's score every day. Here is an 80-year-old gentleman who can go out there every day and beat his age on the golf course and shoot under 80.

I just want to tell you a couple of remarkable events about Pro Pezzoo. I read here from the Providence Sunday Journal, Providence, RI. My friends, the distinguished Senators from Rhode Island, Senators PELL and CHAFEE, know Pro Pezzoo and probably remember many of the things he has done.

Providence Sunday Journal, May 20, 1984:

> One day this past summer Harry Pezzullo fired a course record 65 over the south course of JDM Country Club, Palm Beach Gardens, FL.
>
> Although noteworthy on a local level, such a feat normally wouldn't make national news * * * except that Harry happened to be well into his 74th year.

Think of it: In his 74th year he shot a 65 at the south course at JDM Country Club.

I had the pleasure of playing that course, and I know this was a phenomenal achievement.

Now, let me tell you another thing. On another occasion on the south course, he shot a 66, the topped it all off with an eagle three at the 506-yard, 17th hole. And on another occasion, on the north course, Pro Pezzoo caused a stir when he double-eagled JDM's 520-yard, sixth hole.

Mr. President, I have played that hole, I have the honor to say, with Pro Pezzoo and others who are friends of the Pro's. The hole has since been eliminated in the reformation of the north course at JDM Country Club. But they used to have a marker at the point on that par 5 where Pro Pezzoo hit his second shot to double-eagle the then existing sixth hole of the north course at JDM Country Club.

On the occasion I last played that hole with him, Mr. President, I had the pleasure of playing with him and his very dear friend and close companion, Perry Como, who plays with him on a regular occasion there at that country club.

This is a charming man, a friendly man, a man who remembers everybody's name, always has a kind word for everybody, a man who has been devoted to his profession and been an outstanding golfer for all of his lifetime, and at the age of 80, Mr. President, can do something tomorrow morning that you and I cannot do and that almost every Senator cannot do, Mr. President.

Think of it. Tomorrow morning, perhaps with some luck, SAM NUNN could break 80. Perhaps with some luck, MALCOLM WALLOP could break 80. Tomorrow morning, Mr. President, with some luck, DON NICKLES could break 80. But, Mr. President, for the other 97 of us in the greatest deliberative body in the world, that pleasure is withheld from us. Day after interminable day, we struggle. We fight, we pray, and yet we are denied the pleasure of shooting 80 or less than 80. But on each and every day, Mr. President, the old Pro Pezzoo takes his 80-year-old body on that golf course and shoots less than 80 strokes.

So, I am delighted, Mr. President, on this occasion to send along to a beloved friend, my very best wishes for a happy birthday on June 30, with this one request: He is welcome to come here anytime and be my guest here around the U.S. Senate if he will only teach me how to break 80 once in a while.●

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. on Thursday, June 13; that following the prayer, the Journal of the proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein, with the time under the control of the majority leader or his designee.

I further ask unanimous consent that at 10 o'clock tomorrow morning, the Senate resume consideration of S. 1204, the Surface Transportation Efficiency Act, with the Byrd amendments then being temporarily laid aside and Senator DIXON recognized to offer an amendment relating to the numbering of a highway.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. MITCHELL. Mr. President, let me repeat in summary fashion what I earlier stated. There will be no further rollcall votes this evening for the reasons earlier stated. The Senate will return to consideration of this bill at 10 a.m., at which time the Senator from Illinois [Mr. DIXON] will be recognized to offer an amendment relating to the numbering of a highway.

We will then be on the bill at the suggestion of the distinguished Republican leader. It is my hope that the respective majority and minority staffs will work this evening and tomorrow morning to develop a list that will reduce to a finite and specified number the amendments that remain to be offered and that, thereafter, we will proceed to consideration of the bill; that, if we complete action by the time of the dinner in the evening, that will obviously be it for this bill. If not, there will be a window time of 2 hours for the dinner following which we will return until we complete action on this bill.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9 A.M. TOMORROW

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess, as under the previous order, until 9 a.m. tomorrow, Thursday, June 13.

There being no objection, the Senate, at 8:07 p.m., recessed until Thursday, June 13, 1991, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 12, 1991:

THE JUDICIARY

ALICE M. BATCHELDER, OF OHIO, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT VICE FREDERICK PIERCE LIVELY, RETIRED.

CLYDE H. HAMILTON, OF SOUTH CAROLINA, TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

DEPARTMENT OF STATE

ARTHUR HAYDEN HUGHES, OF NEBRASKA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF YEMEN.

DEPARTMENT OF STATE

CHRISTOPHER W. S. ROSS, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SYRIAN ARAB REPUBLIC.

DEPARTMENT OF EDUCATION

JEFFREY C. MARTIN, OF TENNESSEE, TO BE GENERAL COUNSEL, DEPARTMENT OF EDUCATION, VICE EDWARD C. STRINGER, RESIGNED.

CONFIRMATION

Executive Nomination Confirmed by the Senate June 12, 1991:

DEPARTMENT OF COMMERCE

PRESTON MOORE, OF TEXAS, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF COMMERCE.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.